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Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA,
INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.

CERTIORARI GRANTED NOVEMBER 25, 1940.

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AFTERNOON SESSION, 2.10 P. M.

Examiner Bennett: Be in order, please. You may resume.

Mr. Haycraft: I will call Mr. Touff to the witness stand this time.

Examiner Bennett: You will be sworn, please.

DAVID SAUL TOUFF, was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

7160

Q. Your name, Mr. Touff? A. David Saul Touff.

Q. Where do you live? A. Detroit.

Q. What is your occupation? A. I am a dress buyer.

Q. A little bit louder so everybody can hear you. A. I am a dress buyer.

Q. For what firm? A. J. L. Hudson Company.

Q. How long have you been a dress buyer for the J. L. Hudson Company? A. I have been a buyer for the J. L. Hudson Company nine and a half years.

Q. What department or—strike that out. When you became buyer for the J. L. Hudson Company, what did you buy? A. I was a buyer of sports apparel.

Q. Was there a department for that particular type of goods at that time? A. Yes. 7161

Q. What was the department number? A. 385.

Q. How long have you been a buyer of sports apparel? A. From February, 1927, to July, 1931.

Q. During that period of time did you buy for any other departments? A. (Witness shakes head negatively.)

Q. Subsequent to July, 1931, what did you buy for Hudsons? A. I bought misses' moderate priced dresses, daytime dresses.

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Q. What department? A. Department 369. Until—

Q. Anything else? A. Until February of 1933. Yes. And I had two better dress departments added.

Q. What were the numbers of those departments? A. Department 338, women's better dresses; Department 358, misses' better dresses.

Q. So since February, 1933, you have been buying for those three departments? A. Yes. And at one time during that period I bought for Department 359, which was the gown room.

Q. For how long a period? A. From August to June.

7163 Q. What year? A. From June, 1933, until June, 1934—
from August, 1933, to June, 1934.

Q. Now, what is the price range of the dresses that you buy in Department 338, cost price range first? A. From \$12.75 to \$25.

Q. And the approximate retail price range? A. \$21.75 to \$39.75.

Q. What is the cost price range of the betters bought for Department 358? A. From \$12.75 to \$25.

Q. And the retail prices? A. From \$21.75 to \$39.75.

Q. What is the cost price range for Department 369? A. From \$8.75 to \$12.75 cost.

Q. The retail price range? A. From \$13.95 to \$19.75.

Mr. Albert: \$13.95 to what was that?

7164 The Witness: \$13.95 to \$19.75, daytime dresses only.

By Mr. Haycraft.

Q. Well, now, has it been your custom during the period of time from February, 1933, up to, say, January, 1936—strike that out. From February, 1933, until January, 1936, where did you buy the garments for these three departments? What market? A. We bought very largely in New York.

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Q. Did you personally go to New York? A. Yes.

Q. What was your custom as to the frequency with which you went to New York from February, 1933, to January, 1936? A. You mean how many times did I go?

Q. Yes, how many times, a year or season or whatever way you can measure it? A. Well, it varied with the season. This is just a guess. It probably was forty times a year.

Q. How many seasons do you recognize as a year in your business? A. Two.

Q. What are they? A. Spring season and fall season.

Mr. Meder: Keep your voice up.

7166

By Mr. Haycraft.

Q. When did they begin and when did they end?

Mr. Meder: Talk loud.

A. Well, we considered the spring season starting February 1 and ending July 31; and the fall season, August 1 ending January 31.

By Mr. Haycraft.

Q. Is there any difference between types of dresses that you buy for those two seasons? A. Yes.

Q. What would you say is the difference? A. Well, we have very definite style difference between spring season and fall season, different types of dresses, different colors of dresses, different materials.

7167

Q. Now, with respect to the merchandise that you buy for Department 359 prior to January, 1936, who were your principal sources of supply?

Mr. Albert: Pardon me, Mr. Haycraft. Did you say 359 or 369?

Mr. Haycraft: My mistake. Make that 338.

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The Witness: What is the question?

(Question read.)

Examiner Bennett: Ask him for the individual names or classification?

Mr. Haycraft: I am asking him for names, if he can recall them.

Examiner Bennett: All right.

A. Our principal sources of supply for Department 338 were—is it necessary to give this information?

Examiner Bennett: Well, I am not going to force you to give your sources of supply, if you—

7169

Mr. Haycraft: Well, I will change the question.

Examiner Bennett: —think it is going to do your business harm.

Mr. Haycraft: I will change the question.

By Mr. Haycraft.

Q. Prior to—I will put the question this way: Are you familiar with the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When did you first learn of its existence? A. I can't recall that definitely.

Q. Well, give us an approximate date, if you can. A. I should say shortly after its organization, probably—I don't know when that was—1932, I imagine.

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Q. Do you recall the occasion when the J. L. Hudson Company signed a declaration of co-operation with the Guild? A. No.

Q. You do not? A. No.

Q. Do you recall the time when you were required by—first I will ask who your superior is? A. Mr. Simmons.

Q. Do you recall a time when you received any instructions? Did you ever receive any instructions from Mr. Simmons with respect to placing a so-called warranty

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stamp on orders placed with dress manufacturers? A. All order books for dress buyers were stamped before they were given to us.

Mr. Albert: That is objected to, if it please the Court. I ask that the answer be stricken as not responsive.

Examiner Bennett: Well, it is not responsive, but it is the information that they are trying to get.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 498-A, and ask if you can identify the stamp contained thereon? A. Yes.

Q. Is that the stamp you have in mind in your last answer? A. Yes, sir.

Q. And was that the stamp that was placed on all orders that was placed in your department? A. Yes.

Q. Do you know when that stamp was first placed on orders which you placed with dress manufacturers? A. No, I don't remember.

Q. Can you give us an approximate date? A. I would have to guess at it.

Q. Well— A. It is so long ago.

Q. Well, did you place it on there in 1933? A. It was before that.

Q. Did you place it on there in 1934? A. It was before that.

Q. During and throughout the year 1935, did you continue to buy dresses for Departments 338, 358 and 369? A. Yes.

Q. Did you have any knowledge as to whether or not any of your sources of supply were members of the Fashion Originators Guild of America, Inc.? A. Yes.

Q. Now, I will ask you to testify as to your understanding as to the sources of supply for Departments 338, 358

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and 369 that were Guild houses during the year 1935, that you can recall? A. I am afraid I missed the first part of the question.

Mr. Albert: Now, then——

Examiner Bennett: Would it damage your business to disclose it?

The Witness: If I gave the names?

Examiner Bennett: Yes.

The Witness: I will be giving my competitors the names of the people I was previously successful with.

7175

Examiner Bennett: Well, answer that question as to whether or not, in your judgment——

Mr. Meder: On behalf of the company, I will instruct the witness that during 1935 he may give those names.

Examiner Bennett: All right. Go ahead.

The Witness: You want the names or principal sources of supply for the three departments?

By Mr. Haycraft.

Q. Yes. A. For 1935?

Q. Yes. For each of the departments. Take up 338 first. A. 338, Antman & Bark.

7176

Mr. Albert: What was that?

The Witness: Antman & Bark. Matthes & Kadetsky; Ed Garrick.

Mr. Albert: What was that?

The Witness: Ed Garrick.

Mr. Feldman: Garrick.

The Witness: Baron Dress Company; Shatco; Miller & Rudy; Henry Ganz.

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By Mr. Haycraft.

Q. How do you spell Rudy? A. R-u-d-y.

Mr. Albert: What was the last one?

The Witness: Henry Ganz. They are the most important ones.

Mr. Albert: Would you mind speaking up a little louder, Mr. Touff?

The Witness: I am sorry.

By Mr. Haycraft.

Q. That is 338? A. 338 department.

Mr. Albert: The last one was Henry Ganz?

The Witness: Henry Ganz.

7178

By Mr. Haycraft.

Q. Now, 358. A. 358, the most important resources were Milton Altmark; Strouse-Miller; A. Goodman; Mary Lee; Frank Starr-Friedlander; Capri; Harry Cohn. Those are the most important.

Q. All right. Now the same for 369. A. International; Aywon; Whitlan-Schneider.

Q. What was that? A. Whitlan-Schneider; C. H. D. Robbins; Lila Modes; Famous Dress; Gracette; Bretter & Swessman.

Q. What is that, Greiter? A. Bretter, B-r-e-t-t-e-r. As-terly; Lipman Brothers.

7179

Q. Is Lipman Brothers different from H. Lipman, or is that the same? A. No, I don't know; I don't know any H. Lipman.

Q. It was Lipman Brothers that you did business with? A. Yes.

Q. Did you mention H. M. Fried in Department 369—was that a source of supply? A. It was not an important source of supply until the beginning of 1936.

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Q. Did you mention Dolcet Dress, or is that Antman & Bark? A. Antman & Bark and Dolcet are the same.

Q. Now, with respect to Department 338, source of supplies that you have mentioned, can you testify as to the percentage of your total purchases—garments purchased in that department—which consisted of Guild resources?

A. What percentage of the merchandise was Guild merchandise?

Q. Yes.

Mr. Albert: What department are you referring to?

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Mr. Haycraft: 338, in 1935, at the beginning of 1936.

A. It would be a guess.

Q. You haven't any figures on it? A. No.

Q. Could you make an estimate? A. Yes.

Mr. Albert: Now, if it please the Court, the witness has testified that it would be a pure guess. I don't think the Commission is interested in anybody's guess.

Examiner Bennett: I will let him make an estimate, if he can make one that approximates the situation.

Mr. Haycraft: I can't hear you.

7182

Examiner Bennett: I say, I will let him make an estimate if he can make one that approximates the facts.

Mr. Albert: Exception.

Mr. Haycraft: That is what I wish to get, yes sir.

A. I would say that in 338 department 65 per cent. of our merchandise came from Guild houses.

By Mr. Haycraft.

Q. What is your estimate as to the percentage of Guild houses from which you purchased the merchandise for Department 358? A. At least—

Mr. Albert: Is that also a guess, Mr. Touff?

The Witness: I beg your pardon?

Mr. Albert: Is that also a guess?

The Witness: Much less than the other one.

About 95 per cent.

By Mr. Haycraft.

Q. Now, what is your estimate for Department 369? 7184

A. About 75 per cent.

Q. Did you continue to buy from those Guild houses during the year 1936? A. No.

Q. When did you stop? A. When we were red carded.

Q. When was that? A. February the 14th.

Q. What year? A. 1936.

Q. When you say you were red carded, what do you mean by that? A. I mean that the Guild instructed their membership they were to ship us no further merchandise.

Q. When did you first learn that? A. I don't know the date.

Q. Did you make any attempt to verify that information? A. Yes.

Q. What did you do? A. I went into the market and tried to get my goods. 7185

Q. When did you do that? A. Either the Monday or the Tuesday following, my very next trip to New York.

Q. You mean following the 14th? A. Yes.

Q. Here is a calendar. Will you refresh your recollection on that? A. Either the 17th or the 18th—probably the 17th.

Q. What did you do? A. Well, I went to the various manufacturers. I had been in the habit of doing business.

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with, doing my business with, asked them if they were going to ship the merchandise that was on order, and was told that they were not.

Q. Do you recall how many of the manufacturers you called on? A. During the course of that week I spoke with every important manufacturer that we do business with.

Q. Was there anyone with you on any of those calls? A. Yes, Mr. Simmons was with me at one time.

Q. Do you have a recollection of making—strike that out. On what manufacturer did you call when Mr. Simmons was with you, if you remember? A. We called on three.

Q. Which ones were they? A. We spoke to Mr. Sam Friedlander, Frank Starr-Friedlander; Milton Altmann, and Abe Goodman.

Q. What did Mr. Sam Friedlander tell you when you called on him? A. He told me that he did not expect to ship the goods that was on order unless the red card was lifted.

Q. Did you say anything other than that? A. We wanted to know at that time—in fact, our major interest in talking to Mr. Friedlander was to find out whether or not we were going to have to take his merchandise if the red card was lifted in addition to what we might subsequently buy. In other words, if we went out and re-bought merchandise to replace what was on order with him, and the red card was lifted within a week or so, would we have to take what we had subsequently purchased and what was already on order with him. Mr. Friedlander was very co-operative about it and said that he didn't know what was going to happen and regretted it all very much, but if the red card was lifted, if we wanted the merchandise, we would be at liberty to take it. If we didn't want it, it would not be necessary to take it. He would absorb it in the interest of business.

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Q. Did you ask him any question with respect to why he had been red carded? A. (There was a short pause.) There was probably some discussion about that, but he didn't know why we had been red carded.

Q. You mean by that, that that is what he told you, or what did he say? A. (There was a short pause.) I can't remember the details of that discussion.

Q. Well, now, what was the other call that you made? We went to see Milton Altmark.

Q. What did he have to say? A. Well, we discussed the same situation with him, and he was not quite as co-operative about it.

Mr. Albert: I ask that that be stricken, if it please the Court, as not responsive. 7190

Mr. Haycraft: I object to the witness being interrupted in the course of his answer.

Examiner Bennett: I will let him answer. Go ahead.

Mr. Albert: Exception.

Examiner Bennett: Explain in detail what you mean by co-operating.

The Witness: Well, he didn't make the same offer that Mr. Friedlander had made, that if the red card was lifted we need not take the merchandise. He thought that we were asking a very fair question, however, and called Mr. Post on the telephone to ask him what the attitude of the Guild would be in such an event, in the event that the red card was lifted. Mr. Altmark told me that Mr. Post told him over the telephone that rather than have us go through the market asking that question of every manufacturer that we do business with, that we should come to his office and he would explain the Guild attitude on it directly to us. Mr. Altmark and Mr. Simmons and I went to Mr. Post's office. 7191

By Mr. Haycraft.

7193

Q. What happened when you got there? A. We were shown into Mr. Post's office, and Mr. Altmark presented the question that was involved to Mr. Post. Mr. Post said that they had taken the question up with their attorney and the Guild situation was simply this: That we had broken our agreement with the Guild; that, as such, the membership of the Guild could not ship us merchandise. In the event that the red card was lifted and the misunderstanding straightened out, they would expect the membership of the Guild to ship that merchandise; that any loss arising to a member of the Guild from not being able to ship the merchandise through his having to dispose of it at distress prices would be the responsibility of the store, and the store could be sued to collect.

Q. Was that all that was said by Mr. Post? A. Yes, sir.

Q. What did you do then? A. We left. We went to see Mr. Goodman.

Q. Did you present the same proposition to him? A. Yes.

Q. What did he say? A. Substantially what Mr. Friedlander had said.

Q. Did any of them tell you why you had been red carded? A. The impression was pretty general that we had been red carded because of our refusal to return certain dress that the Guild had asked us to return.

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Q. Did you know anything about that transaction? A. I did not.

Q. It was not in your department? A. No.

Q. What did you do after your conversation with Mr. Goodman? A. I think we went back to the office and I think we called and advised Detroit of Mr. Post's conversation, and I think that we were advised to start replacing the goods immediately as best we could. And we called—we called California to have certain merchandise bought for us out there.

Q. Did you make any further attempt to replace the goods while you were in New York on that trip? A. Yes, sir.

Q. What did you do? A. Well, I set about the business of looking for new people to buy from for every one of those departments—quite a task.

Q. Were you familiar with the New York market? A. Yes, sir.

Q. Well, you didn't have any difficulty doing that, did you? A. I had a great deal of difficulty doing it.

Q. What was the matter? A. It was impossible for me to buy enough satisfactory dresses for my departments.

Q. Has that situation changed any since that time? A. ~~7196~~
Very slightly.

Q. What is the situation to-day? A. In Department 338 the situation is somewhat corrected; some of those resources have been replaced. We are still without the one single resource that provided us with our largest supply of merchandise.

Q. Which was that one? A. Antman & Bark.

Mr. Feldman: Who?

The Witness: Antman & Bark. I still have considerable difficulty in Department 338 buying enough desirable half size dresses. Department 358—

Q: Before we leave 338, may I ask you—well, go ahead, I will not interrupt you. A. In Department 358 the picture remains very much the same. It is still impossible for me to buy anywhere near enough desirable dresses, satisfactory dresses for Department 358. Department 369, the situation is somewhat corrected, but it is likewise impossible to buy enough dresses of the \$10.75, \$11.75 and \$12.75 costs to-day, or buy on— 7197

Q. Have you thoroughly canvassed the New York market? A. Yes, sir.

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David S. Touff—For. Commission—Direct.

Q. Have you gone to any other market? A. I have been in Chicago and Cleveland.

Q. More than once? A. Often.

Q. Now, Mr. Touff, from your experience that you have described here, do you have any opinion as to whether or not your inability to get merchandise from the Guild resources, subsequent to the red carding by the Guild, has had an effect upon the departments for which you buy?

A. A very definite effect.

Q. Will you testify as to what that effect is, beginning with 338?

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Mr. Albert: Objected to, if it please the Court; the exhibits in evidence speak for themselves.

Examiner Bennett: Well, we will have his opinion, if he has one.

A. Department 338 was materially affected during the months of March and April by not having enough satisfactory dresses. Department 358 was materially affected during the entire spring season by not having enough desirable dresses at \$29.75 and \$39.75. Department 369 is materially affected all during the spring season, until about the 15th of June, by not having enough desirable dresses that cost \$10, \$11 and \$12.75.

Q. What happened in June to remedy the situation?

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A. We had a style change, it was a little bit unusual and unexpected, and made it possible for us to meet our figures at those prices with the limited market that was available.

Q. In what price line was that that you were able to meet the situation? A. At \$10.75 cost.

Q. At \$10.75 cost. How about the \$11.75 and \$12.75?

A. The \$11.75 price line has never been corrected at any time during the spring season. The \$12.75 price line is in a similar situation to the ten.

Q. Now, will you describe in detail just how Department 338 was affected, that is the price line, the name of the source of supply and so on? A. Well, we have been in the habit for a period of years of doing business with those people that I have named, to build up a clientele, people who wanted that type of merchandise, starting with probably March 1 or March 15, when that merchandise was completely cleaned from our stocks, that we were unable to offer them that type of merchandise any longer, that standard of merchandise any longer. The biggest loss we suffered in that department was the loss of Anton & Bark, who made a sizeable dress to sell for \$29.75, and which it was impossible to replace. We lost business all during the spring season at \$29.75, as a result of that.

7202

Q. Were you able to replace the garments that you had been buying at Henry Ganz? A. Henry Ganz made a very useful woman's dress, and they are the only house in New York that made that type of a dress, and it is impossible to replace it.

Q. Were you able to replace the garments that you had been buying from Matthes & Kadetsky? A. Not during the spring season, but I think for fall we will have replaced Matthes & Kadetsky and Ed Garrick.

Q. And Ed Garrick also? A. Yes.

Q. But you did not during the spring? A. No.

Q. Now, referring to Department 358, will you give the same detail as to the effect on the different lines and the names of the different manufacturers who were supplying the garments? A. Well, with the red carding of Department 358, there were only three or four houses left in the market, making daytime dresses to sell at \$29.75 and \$39.75. Only one of those houses was, to our point of view—to my point of view—a satisfactory source of supply. As a result, we were non-competitive at \$29.75 and \$39.75 all spring. We did not have desirable assortments

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at \$29 and \$39 during this spring season. We lost business at those prices continually. We probably will again this fall.

Q. Your testimony just referred to the daytime dresses

A. That's right.

Q. Was there any effect upon evening dresses in the department? A. Well, we had previously done a very large part of our evening dress business with Frank Starin Friedlander, a resource which we lost, and a resource which I am finding it extremely difficult to replace although there are quite a number of evening dress houses available for us to buy from, it seems impossible to buy that—a dress as satisfactory as his.

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Q. Now, will you give the same testimony with respect to Department 369? A. 369, we lost every resource but one that we had used as a supply for \$10.75 and \$11.75 and \$12.75 house dresses. All during this spring season we lost business as a result of not having a sufficient supply of satisfactory types, satisfactory dresses. We will probably continue to lose business at those same prices again this fall.

Q. In your opinion, did the inability to replace re-order for merchandise from these manufacturers and from the manufacturers, Guild manufacturers, supply garments for Departments 358 and 369, have any effect upon the sale in those departments? A. It had a very considerable effect. Every dress that—practically every dress that we were running, getting business on at the time of the re-ordering, we were forced to drop, had to go out into the market and attempt to buy dresses to replace them, get new numbers established, running numbers established. We lost the whole basis of our immediate operation, our immediate re-order numbers.

7206

Q. Mr. Touff, do you have any opinion as to what factors should be taken into consideration in determining what is a desirable source of supply of merchandise for garments? A. Yes.

Q. In your opinion, what are the factors that go to make up a desirable source of supply, or resource as it is known in the trade? A. Well, first of all, a resource must make the type of dress that we are successful in selling. A great many manufacturers who make satisfactory dresses that are not satisfactory to us—that is, they make satisfactory dresses but they are not satisfactory to us. A manufacturer has to make the kind of dress we are successful in selling, both as to style and type, standard of workmanship and fit, and we find that a manufacturer, to be successful, for a store of our size, has to be equipped to handle volume business quickly and efficiently. Many manufacturers who make desirable dresses are not equipped to give them to us in as large quantities, and in as short a space of time as we find it necessary to have them. Also, we find it necessary, because of our competitive position, to have what are known in the trade as top dresses, dresses that come from houses who style them well, make them well. It is absolutely essential that we have the best style dresses.

7208

Q. What has been your experience as to the material used in the sources of supply by members of the Guild as compared with non-Guild members? A. The members of the Guild, being the largest manufacturers in the trade—

Mr. Albert: If it please the Court, may I ask that that be stricken as a conclusion of the witness for which no foundation has been laid and volunteered in the answer?

7209

Mr. Haycraft: I object to the witness being interrupted. I am asking this witness for his opinion and his conclusions and that is what I want.

Examiner Bennett: Well, I think that he should have some knowledge and experience.

Mr. Haycraft: That is a matter of cross-examination when we get through with his testimony, Mr. Examiner, if he doesn't believe he is competent to testify.

7210

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Examiner Bennett: Yes. I overrule the objection. You may proceed.

By Mr. Haycraft.

Q. Complete your answer.

Mr. Haycraft: Read the answer as far as he got. (The reporter read as follows: "The members of the Guild, being the largest manufacturers in the trade—")

Mr. Haycraft: Now read the question to him.

7211

(The reporter read as follows: "Q. What has been your experience as to the materials used in the sources of supply by members of the Guild as compared with non-Guild members? A. The members of the Guild being the largest manufacturers in the trade—")

The Witness: The members of the Guild being the largest manufacturers are very generally in a position to have confined to them, brought to them for their first selection the most desirable items in the piece goods market, the most desirable items in the trimmings market, that are available. It is naturally to the best interest of the large piece goods houses and the large trimming houses to have the manufacturer who has the largest outlet use his product. Because of this many of the Guild houses are—have at times some of the most desirable items in the market and have them exclusively for themselves.

7212

By Mr. Haycraft.

Q. Would you say that that fact is a factor to be taken into consideration in determining the desirability of a resource? A. Absolutely.

Q. What have you been doing, Mr. Touff, during the past two weeks to replace merchandise that you have been buying from the Guild or that you have been accustomed to buying from the Guild at this time of the year, Guild manufacturers at this time of the year? A. I found it very difficult to complete my early fall plans. I have been to Chicago three times on fall merchandise; I have been to Cleveland once; I have been in New York four times. I have as yet been unable to complete my August appropriations which would normally have been completed a week ago.

Q. Are you having any trouble in any particular line, or is it a general condition with respect to all of the merchandise you handle? A. I am incomplete in all three departments, having some particular difficulties in Department 369.

7214

Q. What are your difficulties in 369? A. I have been unable to buy enough \$10.75 cost wool dresses of the type that I formerly bought and sold very largely in the months of August and September from two or three Guild houses.

Q. In your opinion, will that have an effect upon the sales—strike that out. In your opinion, will your inability to complete your lines have an effect upon the sales of the J. L. Hudson Company in your departments during the coming season?

Mr. Albert: If it please the Court, the question is objected to. We are now trying to make the witness a prophet. Maybe nobody is going to buy any wool dresses in August.

7215

Mr. Haycraft: I am asking for his opinion.

Examiner Bennett: Well,—let him give it for what it is worth. I think it will be difficult—

The Witness: I think it will—the J. L. Hudson—

Examiner Bennett: —to answer the confidence.

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David S. Touff—For Commission—Direct.

The Witness: J. L. Hudson Company's business will suffer at certain price lines as a result of my not being able to buy those dresses.

By Mr. Haycraft.

Q. Which price lines do you have in mind? A. \$16.95 price line.

Q. That is retail price or wholesale price? A. Yes, retail price.

Mr. Haycraft: Mark that.

7217

(A certain document was thereupon marked Commission's Exhibit 523 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 523 for Identification, and ask you if you can identify it? A. Yes, sir.

Q. What is it?

(There was a discussion off the record.)

By Mr. Haycraft.

Q. Will you state what that is? A. This is a listing of manufacturers who make better dresses from the Fairchild directory for the fall of 1936 and a rather broad classification by type and price line.

7218.

Mr. Albert: May I have the answer repeated?
(The answer was read.)

By Mr. Haycraft.

Q. Did you prepare it? A. Yes.

Q. And is it based upon your experience and knowledge?
A. Yes.

Q. Is it correct? A. To the best of my ability.

Q. What price lines have you included in this? A. I have broken down the misses' daytime dresses into cost prices of \$12.75 and \$14.75, \$16.75 and \$18.75 to \$25.00 inclusive; \$29.75 and up; all misses' evening dresses in one classification; all women's dresses in one classification; all cotton dresses in one classification; and maternity dresses in one classification.

Q. Now, in the classification of \$29.75 and up, what did you include in the up? A. They are all houses who manufacture dresses who formerly in the season manufacture dresses that cost \$29.75 and up; includes a great many manufacturers who manufacture dresses that probably wholesale for \$100 and up. It is a very broad classification.

7220

Q. Does the exhibit also contain a summary of the classification that you have indicated? A. The exhibit shows the totals for each of those classifications.

Mr. Haycraft: I offer it in evidence.

(The document referred to was handed to Mr. Albert.)

Mr. Albert: If it please the Court, may we have some further explanation of the meaning of this summary?

Examiner Bennett: I beg your pardon?

Mr. Haycraft: There is no objection to asking questions about it because it has not yet been received in evidence. I will be glad to ask some further questions. I reserve it then because I anticipated the rule of—

7221

Mr. Albert: Well, in that it represents this witness' opinion of a list of houses with respect to the various price lines.

Mr. Haycraft: It is the Fairchild list, as I understand.

Mr. Post: (Mr. Post shakes head negatively.)

7222

David S. Touff—For Commission—Direct.

Mr. Albert: And the fact that they are either Guild or non-Guild, I have no objection, your Honor, but in so far as the accuracy of it is concerned, I don't, of course, concede that.

Examiner Bennett: Yes. All right.

Mr. Albert: But as this witness' opinion and as his listing—

Mr. Haycraft: Yes.

Mr. Albert: —and that it was prepared by him and merely is a matter of his opinion, I have no objection to it being admitted.

Examiner Bennett: Well, received.

7223

(Whereupon the document heretofore marked for identification Commission's Exhibit 523 was received in evidence.)

By Mr. Haycraft:

Q. Mr. Touff, in the first column of this exhibit appears a list, the first column of this exhibit is headed "Manufacturer" and a number of names thereunder. What are those names; are those the sources from which they were taken? A. From the Fairchild's directory.

Q. Which issue? A. The early fall, 1936.

Q. What divisions of that directory? A. That directory is—

Q. Divided? A. Is not divided according to price line.

7224

Q. Then the division according to price line and according to this exhibit is your selection by yourself? A. That is right.

Q. Now, immediately following the list of manufacturers are a group of red x's after certain of the manufacturers' names. What do those red x's signify? A. They are members of the Guild.

Q. Now, in the first numerical column, that is, the column headed "\$12.75-\$14.75" appear black x's after cer-

tain names and red x's after certain names. I will ask you to indicate what those x's signify. A. The black x's signify that the manufacturer opposite x is a non-Guild manufacturer, manufacturing dresses at \$12.75 and \$14.75, and the little red x that is in there in pencil means that the Guild house standing opposite that x manufactures dresses at the same price.

Q. All right. Now, is that explanation true also for the remaining columns? A. Yes.

Q. \$16.75 and so on? A. Yes.

Q. Now, at the bottom of the exhibit after the reading "Summary" I find certain figures: 75, in the first column. What does that indicate? A. That indicates that there are that many people in that listing that are members of the Guild.

7226

Q. Is that a totaling of the red x's? A. That is right.

Q. Then in the column headed "\$12.75-\$14.75" I find the figure 9. What does that represent? A. That means that there are nine non-Guild manufacturers listed in the Fairchild's directory making that price dresses.

Q. Now, under the column headed "\$16.75" I find in the summary the figure 4. What does that represent? A. There are four manufacturers in the Fairchild's directory manufacturing at \$16.75, dress manufacturers in the Fairchild's directory that are not members of the Guild.

Q. Now, in the column headed "\$18.75 to \$25.00" I find the figure 5. What does that represent? A. That there are five manufacturers who are not members of the Guild whose names are listed in the directory, who manufacture dresses at approximately those prices.

7227

Q. Now, the next column headed "\$29.75 and up" I find in the summary the figure 25. What does that represent? A. There are twenty-five better dress manufacturers who are not members of the Guild, who manufacture dresses that cost approximately \$29.75 and higher.

Q. Now, in that column "\$29.75 and higher" do you have any knowledge so that you can testify as to how many of those were \$29.75 as distinguished from the higher prices?

A. No.

Q. You do not? A. It does not affect my department.

Q. It does not affect your department. All right. Now, the next column headed "Misses' Evening" I find nineteen names in the summary and the figure 19 in the summary. What does that represent? A. That there are nineteen non-Guild houses making misses' evening dresses which cost \$12.75 up, whose names are listed in the directory.

7229 Q. Now, with respect to the column headed "Women's Day & Eve," I find the figure "26" in the summary; what does that represent? A. That there are twenty-six manufacturers listed in the Fairchild Directory who are not members of the Guild, who make women's daytime and evening clothes, at a cost above \$12.75.

Mr. Albert: May I ask, if it please the Court, whether the witness means by that there are only 26 listed in Fairchild's directory?

Examiner Bennett: That is what he says. I do not know what he means by it.

Mr. Albert: Or whether that list contains 26 of those that are listed in Fairchild? I don't think it is clear.

Examiner Bennett: Well, I think—

7230 Mr. Haycraft: You will find out when you get your turn.

Examiner Bennett: That is his statement. I do not know.

By Mr. Haycraft.

Q. Now, under the heading "Cotton." I notice the figure "3" in your summary. What does that represent? A.

That the Fairchild directory lists three houses who make cotton dresses above \$12.75, who are not members of the Guild.

Mr. Albert: Is that above \$12.75?

The Witness: Yes.

By Mr. Haycraft.

Q. \$12.75 and above, or above \$12.75? A. \$12.75 and above.

Q. And the last column headed "Maternity" has "1" in the summary; what does that represent? A. That there is one house listed in the directory as a better dress house who makes maternity dresses, that is not a member of the Guild.

7232

Q. Now, I notice in each of these columns there are red x's indicated a line drawn over the name of the manufacturer; what does that mean? A. That is the classification that I would put that—that particular Guild house in.

Q. I see, from your experience. A. Yes.

Q. Now, I notice in the lower left-hand corner under the caption "Non-Guild," "\$16.75" four names listed. What does that represent? A. That represents the names of the four houses that are in the \$16.75 column that are non-Guild.

Q. All right. And then I notice the names of five manufacturers under the caption \$18.75; what does that represent? A. They are the five houses that are non-Guild houses available at \$18.75 to \$25.

7233

Q. I notice that one of these five houses, namely, Ben Schwartz-Max Heit, has a check mark over it; what does that check mark signify? A. Well, that house was not available to us last—

Q. In other words— A. It is a new house.

Q. A new house? A. Yes. I might say that—if I may—that in all these things the classification is rather broad

7234

David S. Touff—For Commission—Direct.

since any manufacturer makes a variety of price lines; because I have classified them as a \$16.75 house does not mean he makes only \$16.75 dresses. He might at certain times of the year make 10's, and he might at the same time he is making the \$16.75 make \$35's.

Q. What is your classification based on? A. On what his line is—what he generally makes—what his general classification would be in the trade.

Q. Was this exhibit restricted to the New York market? A. Yes.

7235

Q. And does not include manufacturers outside of the New York market? A. Well, it includes the manufacturers that are listed in the Fairchild directory.

Q. Well, can you explain what you mean by that answer? A. I think there is one manufacturer who is listed in the Fairchild directory who has a showroom—no, there are two—that I can think of offhand who are listed in the Fairchild directory, who have showrooms in New York, and are therefore listed, and do not do their manufacturing in New York.

Q. Which ones are they? A. I recall offhand Baron Dress Company and Matthes & Kadetsky.

Q. And Baron Dress Company, the factory is located where? A. In Boston.

Q. And Matthes & Kadetsky is located where? A. In Boston.

7236

Mr. Albert: May I ask one question, Mr. Haycraft, if you have no objection, as to what Fairchild manual the witness is referring to?

Mr. Haycraft: He said the spring and fall.

The Witness: No.

Mr. Haycraft: Or he said—

The Witness: The early fall of 1936.

Mr. Haycraft: The early fall of 1936.

Mr. Albert: The fall of 1936 manual.

Mr. Post: Dress manual, dress directory?

By Mr. Haycraft.

Q. Do you have a copy of it with you?

Mr. Post: Ready-to-wear—is there a distinction between ready-to-wear and the question?

(Witness hands booklet to counsel.)

Mr. Albert: May I see it?

Mr. Haycraft: I will have it marked for identification if you wish.

Mr. Albert: Will you mark it for identification?

Mr. Haycraft: Yes, I will.

(The booklet referred to was marked for identification Commission's Exhibit 524.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 524 for Identification, entitled "Fairchild's Women's Wear Directory of New York, Dress and Costumes, Advanced Fall, 1936," and ask you if that is the document from which Commission's Exhibit 523 was prepared? A. Yes.

Mr. Albert: Have you any objections to our borrowing that manual?

Mr. Haycraft: No, indeed, I thought you had one.

Mr. Post: No.

By Mr. Haycraft.

Q. Now, I will ask you whether or not you made a similar study, or prepared a similar exhibit, for \$10.75 dress houses located in New York? A. Yes.

(A paper was marked for identification Commission's Exhibit 525.)

Examiner Bennett: We will take a ten-minute recess.

7240

David S. Touff—For Commission—Direct.

(There was a short recess taken.)

Examiner Bennett: Be in order, please.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 525 for Identification, and ask you if you can identify that? A. Yes, sir.

Q. What is it? A. It is a listing I made of the \$10. daytime dress houses in the directory, as to whether they are Guild or non-Guild?

Q. They were taken from the same source as the other exhibits, Commission's Exhibit 523, they were taken from the Fairchild Directory— A. Yes.

7241 Q. —Commission's Exhibit 524 for Identification? Yes.

Q. And the red column of X's indicated what? A. The Guild houses.

Q. And the column of black X's under the caption "non-Guild" indicates what? A. The non-Guild houses.

Mr. Haycraft: I offer that in evidence, Commission's Exhibit 525.

Mr. Albert: No objection, if it please the Court as evidence of this witness' computations, without conceding the accuracy of it.

Examiner Bennett: Received.

7242

(Document referred to, heretofore marked for identification Commission's Exhibit 525, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I notice in the right-hand column of this exhibit, opposite the name "Goldstein & Entin," which is printed non-Guild house, the word "Drop" before "Guild." What does that mean? A. That means that he resigned from the Guild during the spring season.

Q. This year? A. Yes.

Q. I also notice the same notation after the name "Phil Zahn & Co., Inc." A. That is the same reason.

Q. I notice a star in front of Joe Levine & Company, Inc., with the word "Konette." A. That means that Konette should be inserted there for alphabetical order.

Q. In other words, it should be a part of the list ahead of Joe Levine? A. Yes, that's right.

Q. I notice the totals have been changed a few times. The present totals are eighteen for Guild and twenty-two for non-Guild; is that correct? A. Yes.

Q. And you have checked this pretty carefully, have you? A. That is right.

7244

Mr. Haycraft: That is all; you may cross-examine.

Cross-examination by Mr. Albert.

Q. Mr. Touff, you listed certain resources for Departments 338, 358 and 369 in response to Mr. Haycraft's questions. Were those the resources in those departments for J. L. Hudson during the year 1935 down to January 31, 1936, or down to the day of red carding? A. I think I said that they were the most important ones.

Q. Yes. Were you confining the resources when you listed them to Guild houses, or did you include all resources? A. He asked me for the most important resources in the department.

7245

Q. Yes. A. I gave him the most important ones.

Q. Were all those resources only Guild resources, or did you give him the resources for 1935, which I believe that previous to that you have stated that you could not reveal? A. Those are obviously not Guild houses, because there are two or three involved that are not.

Q. Exactly. That is why I asked you the question. I wanted to be sure that you knew what you were giving

7246

David S. Touff—For Commission—Cross.

him, and that I was not mistaken in believing that you were attempting to give him only Guild houses. Do you recall when J. L. Hudson Company signed the Declaration of Co-operation? A. No.

Q. Have no remembrance of it whatsoever? A. None.

Q. Did you ever discuss it with any official of J. L. Hudson Company? A. No.

Q. Did you ever discuss it with Mr. Sappington? A. I don't recall.

Q. Did not Mr. Sappington call you in and say "Here we have signed a Declaration of Co-operation with the Guild; you have to conduct your department in such and such manner hereafter?"

7247

Mr. Haycraft: That is objected to; nothing to show that Mr. Sappington is this witness' superior; he said that Mr. Simmons was.

By Mr. Albert.

Q. Did Mr. Sappington call you in to tell you that "from here on we have to conduct the department in a certain way"? A. No, not that I recall.

Q. How did you become aware of the necessity of complying with the Guild rules and regulations?

Mr. Haycraft: That is objected to as nothing in the direct testimony to indicate that he did.

7248

Examiner Bennett: I will let him answer. You may answer. Overruled.

A. I don't recall.

By Mr. Albert.

Q. When did you first see the Guild stamp on J. L. Hudson Company's orders? A. I can't tell you.

Q. When you first saw the Guild stamp on the J. L. Hudson Company orders did you make any inquiry as to what it meant? A. I don't recall.

Q. Do you mean to tell me, Mr. Touff, that you saw—

Mr. Albert: May I have that exhibit, Mr. Martin?

(Mr. Martin hands document to Mr. Albert.)

By Mr. Albert.

Q. —this additional warranty on your order, which was necessarily on the order, and never made inquiry of anybody in J. L. Hudson Company what it meant? A. I did not say that.

Q. You do not recall whether you ever did. A. I said I did not remember making inquiry.

Q. Yes. A. It is a pretty long time ago.

7250

Q. Did you have any conference with Mr. Simmons about it? A. I can't remember.

Q. Did you have any conference with Mr. Sappington about it? A. I can't remember.

Q. Did you have any conference with Mr. Dowley about it? A. That, definitely no.

Q. Did you have any conversations with any of the other buyers about it? A. I don't remember.

Q. Was it the subject of any discussion whatsoever among the buyers? A. I am sorry. I don't recall.

Q. I am sorry, too. Did you have any difficulty with any of your manufacturers when you placed that stamp on your order? A. No.

Q. Did any of your manufacturers ask you what it meant? A. No.

7251

Q. Did any of your manufacturers refuse to accept the order with that stamp on it? A. No.

Q. Were you given any instructions that that stamp was to appear on all orders and was to be accepted by manufacturers upon pain of the order not being placed with them? A. I don't think I understand that.

7252

David S. Touff—For Commission—Cross.

Q. Were you given instructions by anyone in J. L. Hudson Company that unless that stamp appeared on the order, and unless the manufacturer was willing to accept the stamp on the order, that you were not to place the order with such manufacturer? A. There were no orders to place.

Q. Well, now, let me reframe the question. Obviously this stamp had not always been on the J. L. Hudson Company orders; isn't that so? A. That is right; yes, sir.

Q. There was a certain period of time when it began to appear on the order blanks? A. Yes.

7253 Q. Is not that so? Now, were they printed on the order blanks, or were they put on with a stamp? A. They were stamped.

Q. Who stamped them, the buyer? A. No, I don't know.

Q. You received the order blank already stamped? A. Yes, sir.

Q. Were you given any advice as to what to do if a manufacturer refused to accept the order with that stamp on the order blank? A. No.

Q. Did you know what to do if a manufacturer refused to accept the stamp, the order without the stamp? A. That occasion never arose.

Q. Nobody ever questioned you? A. Nobody ever.

Q. About the stamp? A. Nobody ever refused to accept the order with that stamp on it.

7254 Q. So that in so far as you were concerned, when you first saw that stamp on the order, you didn't know the significance of it or the absolute necessity of its not being stricken off the order? A. Isn't that two questions?

Q. Answer one at a time, then, if you think it is. A. I can understand it when I read it.

Q. Yes. A. I think that is the answer to the first question.

Q. In other words, you needed no explanation of what it meant? A. No.

Q. Now, since you needed no explanation of what it meant, did you know what to do if a manufacturer said, "I won't take an order with that stamp on it"?

Mr. Haycraft: I am going to object to that question. The witness said the occasion never arose. I don't see the relevancy nor the materiality and it is not proper cross-examination.

Mr. Albert: I think it is quite material, if your Honor pleases.

Examiner Bennett: Well, you may answer. Go ahead.

A. I was never instructed on the subject. I never asked for information on the subject. 7256

By Mr. Albert.

Q. So that in so far as your instructions were concerned, you were at liberty to place an order with any manufacturer without this stamp on the order?

Mr. Haycraft: That is objected to.

Q. Isn't that so?

Mr. Haycraft: That is objected to as not a proper summary of what the witness has said.

Mr. Albert: Let the witness explain. I am willing to let the witness explain.

Mr. Haycraft: I am objecting to the misleading information being placed in the question. 7257

Mr. Albert: It can't be misleading information in the question when I am asking the witness what he did and what he was accustomed to doing in the matter.

Mr. Haycraft: You are not asking that.

Examiner Bennett: I will let him answer, give his understanding.

7258

David S. Touff—For Commission—Cross.

Mr. Martin: Read the question.
(Question read.)

By Mr. Albert.

Q. The Court said you may answer the question.

The Witness: Will you repeat it for me?
(Question read.)

A. That is not true.

Mr. Post: What was the answer?

Mr. Martin: "That is not true."

7259

By Mr. Albert.

Q. May I ask you what you mean by "That is not true?"

A. I was unable to place an order without that stamp on it. There were none. There were no orders that did not have the stamp on.

Q. Mr. Touff, you don't have that order book with you in the manufacturer's showroom, do you? A. Yes.

Q. You have the specific order with you? A. This one (indicating Commission's Exhibit 498-A)?

Q. Yes. A. I have one just like it.

Q. Well, I mean a facsimile of it? A. Yes.

Q. Do you make the order out right there? A. Several times.

7260

Q. Is it necessary that it be confirmed? A. Is it necessary to be confirmed?

Q. That the order be confirmed, or does your writing out of the order right then and there constitute a confirmed order? A. If I write it out?

Q. Yes. A. If I write it out in the showroom and have it signed, the manufacturer can accept it as an order.

Q. And it is unnecessary for him to receive a confirmation from Detroit, from J. L. Hudson Company? A. If I write it on his order book, it requires a confirmation.

Q. Yes. You are familiar with the firm of Milton Altmark, Inc., aren't you, Mr. Touff? A. Yes, sir.

Q. And they are a Guild house? A. Yes, sir.

Q. And still are a Guild house? A. Yes, sir.

Q. What is the volume of dresses that Milton Altmark sells or sold for 1935? A. What is the volume?

Q. Yes. A. I don't know.

Q. And what is the volume of Milton Altmark for 1935, do you know? A. No.

Q. Are you familiar with Bender & Hamburger, Inc., as a Guild house? A. Yes.

Q. Do you know what their piece volume is? A. No, sir.

Q. For 1935? A. No, sir.

Q. Do you know what their dollar volume is for 1935? A. No, sir.

Q. Are you familiar with Capri Frocks? A. Yes, sir.

Q. As a Guild house? A. Yes, sir.

Q. Do you know what their unit volume is for 1935? A. No, sir.

Q. Do you know what their dollar volume is for 1935? A. No, sir.

Q. Are you familiar with Leonard Saltzman, Inc.? A. Yes.

Q. Do you know them to be a Guild house? A. Yes.

Q. Do you know what their unit volume is for 1935? A. No.

Q. Do you know what their dollar volume is for 1935? A. No.

Q. Are you familiar with Joe Copeland, Inc.? A. No.

Q. You are not familiar with them? A. No.

Mr. Haycraft: Mr. Examiner, I am going to object to further questions of this type of the witness.

If necessary to prevent further cross-examination along that line, I will concede that the witness does

7264

David S. Touff—For Commission—Cross.

not know either the unit volume nor the dollar volume of the Guild manufacturers or of any other manufacturer.

Mr. Albert: Does counsel for the Commission also concede that the witness doesn't know anything at all about the unit volume nor the dollar volume of non-Guild manufacturers?

Mr. Haycraft: Did you hear what I said?

Mr. Post: He added something to it.

Mr. Haycraft: Read the statement.

(The statement of Mr. Haycraft was read.)

Mr. Albert: That is accepted.

Examiner Bennett: All right.

7265

Mr. Albert: I have been specifically examining the witness, Mr. Haycraft, from Commission's Exhibit 523. Will you concede the same lack of knowledge with respect to the houses encompassed within the price range of Commission's Exhibit 525? I mean, you are not making a distinction?

Mr. Haycraft: No, I am not making any distinction.

Mr. Albert: All right.

By Mr. Albert.

7266

Q. Now, Mr. Touff, you stated that you had a conversation with Mr. Friedlander, together with Mr. Simmons, in New York just after you were red carded; is that correct?

A. Yes, sir.

Q. What was it that you told Mr. Friedlander with respect to your fear of double stock?

Mr. Haycraft: Fear of double stock? I object to that question. He didn't say anything about that.

Examiner Bennett: Overruled.

Mr. Albert: The Court has said you may answer.

Examiner Bennett: You may answer.

A. I didn't use the word "fear." I don't think I used that word.

Q. Well, you didn't want to take any chances on a double stock, isn't that so? A. We asked Mr. Friedlander what was his attitude, and what his attitude would be if in the event we went out and purchased merchandise to replace what we had on order with him, what his attitude would be in the event that the red card were lifted within the next week or two—would he expect us to take the merchandise that was on order or not.

Q. Did you expect the red card to be lifted in a week or two? A. I didn't, no.

Q. What led you to believe that the red card—with-
drawn. Did you make any inquiry of your superiors as to the possibility of the red card being lifted in a week or two?

7268

Mr. Haycraft: Objected to.

Examiner Bennett: I will let him answer. Over-
ruled.

A. Did I make any inquiry of my superiors?

By Mr. Albert.

Q. Yes. A. I don't think so.

Q. You didn't inquire of them at all with respect to that? A. No, sir.

Q. What led you to believe that the red card might be
lifted in a week or two?

7269

Mr. Haycraft: That is objected to. He hasn't said that he believed it.

Mr. Albert: The Court's ruling?

Examiner Bennett: You may answer, if you have an answer.

A. I didn't say that I believed it.

7270

*David S. Touff—For Commission—Cross.**By Mr. Albert.*

Q. Well, naturally, when you asked Mr. Friedlander whether or not he would send you dresses, or whether or not you would be required to take his dresses if the red card was lifted in a week or two, you were foreseeing the possibility that it might be lifted in a week or two, weren't you? A. I was simply being cautious.

Q. Were you going to mark time as regards the purchase of dresses while you were determining whether or not that red card was going to stay on? A. No.

Q. You wanted to go out and get dresses, didn't you? A. Yes.

7271

Q. And as a matter of fact, your expectation that the red card might be lifted in a week or two wasn't an honest statement, was it?

Mr. Haycraft: Objected to. He didn't say he expected.

By Mr. Albert.

Q. Or an honest expectation?

Mr. Haycraft: I object to it. He didn't say he expected.

Examiner Bennett: Sustained.

By Mr. Albert.

7272

Q. When you were in New York did you go out to see Mr. Post at all? A. On one occasion.

Q. With Milton Altmarek? A. Yes, sir.

Q. Did you ask him of the possibility of the red card being lifted in a week or two? A. No.

Q. You didn't discuss it with him at all? A. No.

Q. Didn't ask him whether or not it would be a wise thing to lay off and not buy anything for a week or two, that maybe the whole thing would be fixed up? A. No.

Q. Wasn't he the logical person to ask that?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Do you know whether any efforts were made by your superiors towards the lifting of the red card?

Mr. Haycraft: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Mr. Touff, Mr. Friedlander's statement to the effect that the red card, if the red card were lifted, you could take as much of the merchandise as you had ordered, as was on hand—was that what you said? A. No.

Q. What exactly was it? I am not quite certain of that, Mr. Touff. A. Repeat it? I said that Mr. Friedlander said that if the red card should be lifted we could take the merchandise that was on order, if we wanted it, and if we didn't want it, he would absorb it himself. There wouldn't be any difficulty about it.

Q. And that was the position of Mr. Friedlander personally; isn't that so? I mean, he was speaking then only for his own behalf? A. Yes.

Q. As his policy with respect to J. L. Hudson Company if the red card were lifted? A. Yes.

Q. And in no way was he speaking for any other member of the Guild? A. No.

Q. Now, in your discussions either with Friedlander, with Altmark, Goodman, or with Mr. Post, was there any discussion whatsoever of why a red card was issued? A.

7276

David S. Touff—For Commission—Cross.

I don't recall the conversations with the manufacturers well enough because there was no such conversation with Mr. Post.

Q. You are positive that the matter was not gone into?
A. Yes, sir.

Q. And you didn't ask Mr. Post, "What is all this red card about? Why did we get a red card?" A. No.

Q. You are quite certain of that? A. Very.

Q. But you don't recall whether or not you had such a conversation with the manufacturers? You may have had such a conversation, but you do not remember whether there was one or not; is that correct? A. I don't recall the nature of the conversation, sir.

7277

Q. I believe you stated that the issuance of the red card constitutes a claim by the Guild that J. L. Hudson Company had reached its agreement with respect to the declaration of co-operation. Is that a proper paraphrase of what you stated? A. Yes.

By Mr. Albert.

Q. You may answer. A. No.

Q. And you are proud of the fact that you are a buyer of J. L. Hudson Company, are you not?

Mr. Haycraft: Objected to.

A. Yes.

7278

By Mr. Albert.

Q. And you are proud of the fact that they bear the reputation of being one of the leading department stores in the country, are you not? A. Yes.

Q. Now, do you mean to tell us that you did not defend J. L. Hudson Company from the claim that it had breached its agreement to observe the declaration of co-operation when you spoke to these manufacturers?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: I will sustain the objection.

Mr. Albert: Exception.

By Mr. Albert.

Q. Were you not resentful of the fact that J. L. Hudson Company had been red carded?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Haycraft: I think it goes to the bias of the witness, if it please the Court.

Examiner Bennett: I presume that you are going along the same line. 7280

Mr. Albert: Well, I would like to take it for both lines, your Honor, showing the witness' bias. Of course, if the question is answered, it will be answered "Yes," but it will be ruled on specifically.

Examiner Bennett: I do not get just how this would show his bias.

Mr. Albert: Very well, your Honor. Exception.

By Mr. Albert.

Q. Now, Mr. Touff, when you stated that Altmark was not as co-operative as Friedlander, did you mean simply that Altmark would not make the same statement that you could have the merchandise or not, as you desired, if the red card were lifted within a week or two? A. Yes. 7281

Q. That was the only thing you meant by that, is that not so? A. Yes.

Q. Is that your conception of co-operation, Mr. Touff—

Mr. Haycraft: Objected to.

7282

*David S. Touff—For Commission—Cross.**By Mr. Albert.*

Q. —that a manufacturer should give you an edge? Do you understand what I mean?

Mr. Haycraft: That is objected to. The witness has testified to what he meant and what he said, and I object to any further.—

Examiner Bennett: Read the question.
(Question read.)

Mr. Albert: If your Honor please, may I point out that the witness has stated that one manufacturer agreed to give him merchandise if the red card was lifted in two weeks.

7283

Examiner Bennett: I will let him answer.

Mr. Albert: Thank you.

The Witness: Shall I answer?

Examiner Bennett: You may answer.

Mr. Haycraft: If he does understand; I am sure I do not.

The Witness: I cannot answer that question.

By Mr. Albert.

Q. You used the word "co-operative," Mr. Touff.

Mr. Haycraft: Yes, but he did not—

Q. What did you mean when you used the word "co-operative"?

7284

Mr. Haycraft: He did not use the word correctly.

By Mr. Albert.

Q. When did you mean when you used the word "co-operative" in describing the different agreements that it was possible for you to make with two different manufacturers?

Mr. Haycraft: Objected to. He has already answered that question twice, once for me and once for the respondents.

Mr. Albert: He used the word, your Honor, without explaining what he meant.

Examiner Bennett: I will sustain the objection. I think he has answered that already.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Touff, is it your understanding of the declaration of co-operation that upon a retailer being red-carded he is not to receive any merchandise subsequently from Guild manufacturers then on order? 7286

Mr. Haycraft: Objected to; no basis for it; no foundation laid that this witness had any knowledge of the declaration of co-operation. If you recall his direct examination, Mr. Examiner, he testified that he did not know anything about it; he had never seen it, and—

Examiner Bennett: I will let him answer.

A. I have never seen a declaration of co-operation.

By Mr. Albert.

Q. Was it explained to you in any way? A. No.

Q. Have you had any discussions about it? A. No. 7287

Q. So you do not know what it is that you have been required to conform to in your purchase of dresses?

Mr. Haycraft: That is objected to; he testified what his instructions were and he complied with same.

Mr. Albert: May I have an answer, if it please the Court, without a statement of evidence from

7288

David S. Touff—For Commission—Cross.

Mr. Haycraft, and without a reminder to the witness? I think the witness is capable, perfectly, to answer the question and telling me exactly what he said.

Mr. Haycraft: I think, Mr. Examiner, I am entitled to object.

Mr. Albert: Make a legal objection without stating—

Mr. Haycraft: When counsel includes in his statement erroneous facts, or assumes facts which are not in the record.

Examiner Bennett: What is the question? (Question read.)

7289

Examiner Bennett: He may answer.

A. I did not say that.

Q. What did you say? A. I said that I had never seen the articles of co-operation.

Q. Yes. A. The agreement of co-operation, or whatever it is.

Q. Were they ever explained to you? A. Not as such.

Q. What do you mean, "not as such"? I do not think that is quite clear. A. No one ever took the articles of co-operation and went over them with me and said, "These are the points involved."

Q. What were your instructions with respect to the purchase of copies?

7290

Mr. Haycraft: That is objected to. He did not say he had any.

By Mr. Albert.

Q. Did you have any instructions with respect to the purchase of copies?

Mr. Haycraft: That is objected to. Nothing to show that there are such things as copies.

A. No.

Examiner Bennett: I will let him answer.

(Question read.)

Mr. Albert: I think the witness answered "No."

The Witness: No.

By Mr. Albert.

Q. So that you were not restricted in the purchase of copies?

Mr. Haycraft: Same objection.

Examiner Bennett: I will sustain the objection. I think the question implies a misstatement.

Unless you are almost through, we will take an adjournment until to-morrow morning.

7292

Mr. Albert: Oh, no, your Honor, far from being through.

Examiner Bennett: How?

Mr. Albert: Far from through, your Honor.

Examiner Bennett: We will adjourn until to-morrow morning at 10 o'clock.

Mr. Haycraft: That is good; I was afraid he was going to quit.

(Whereupon, at 4.30 o'clock P. M., August 20, 1936, the hearing in the above-entitled matter was adjourned.)

7293

7294

David S. Touff—For Commission—Cross.

Court Room No. 722,
Federal Building,
Detroit, Michigan,
August 21, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

7295

Examiner Bennett: Be in order, please. You may proceed.

DAVID SAUL TOUFF resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Albert.

Q. Mr. Touff, you prepared certain figures pertaining to charts and analyses of the total volume both in units and in dollars of your respective departments and gave those analyses to Mr. Sappington, did you not?

Mr. Haycraft: Object to it. Not proper cross-examination, irrelevant and immaterial.

Examiner Bennett: Not covered—

Mr. Haycraft: Not covered by the direct examination.

Examiner Bennett: All right. Sustained.

Mr. Albert: If it please the Court, the witness has also testified orally as to the effect of the recording on his departments.

Examiner Bennett: Yes. Well, he has testified orally. You are asking him for those figures; if that is what you are doing, that is all right.

7296

By Mr. Albert.

Q. Now, Mr. Touff, in connection with the opinion that you have given us with respect to the effect on the various departments of the red carding, did you make any report with respect thereto to Mr. Sappington?

Mr. Haycraft: Same objection.

Examiner Bennett: Well, I will let him answer that.

A. I should answer, did you say?

By Mr. Albert.

Q. Yes. A. I made a great many reports to Mr. Sappington.

7298

Mr. Albert: May I see Commission's Exhibits 481 and 482, please?

(The exhibits were handed to Mr. Albert.)

By Mr. Albert.

Q. I show you Commission's Exhibits 481 and 482, which are analyses of Departments 338 and 358 with respect to piece sales, and ask if those exhibits, as presently shown you, are in the same condition as they were when you handed them to Mr. Sappington?

Mr. Haycraft: Just a moment. Don't answer. I object to that on two or three grounds. First, there is nothing to show—there is no foundation laid that the witness prepared these exhibits and had anything to do with them; and, secondly, it is not proper cross-examination. He wasn't interrogated about them.

7299

Examiner Bennett: Yes.

Mr. Albert: I will make the question simple, your Honor.

7300

*David S. Touff—For Commission—Cross.**By Mr. Albert.*

Q. Mr. Touff, in connection with Exhibits 481 and 482 now shown you, did you make any written report, render any written opinion, or attach to those reports any written remarks for Mr. Sappington?

Mr. Haycraft: The same objection.

Examiner Bennett: That is sustained. If you want to find out whether he made those figures for Mr. Sappington, that is all right.

By Mr. Albert.

7301

Q. Did you have those figures prepared for Mr. Sappington? A. I don't know.

Q. You don't recall? A. I don't know.

Q. Did Mr. Sappington ask you to prepare those figures? A. Mr. Albert, these figures are available in the store. They are part of our unit control system. Anybody might make these figures.

Q. Have you seen those figures before? A. I have never seen these figures, these exhibits before, no.

Q. Have you seen those figures, not those exhibits, Mr. Touff? A. I don't know.

Q. Did you analyze those figures for Mr. Sappington? A. I haven't seen these figures. I don't know that I have seen these figures before.

7302

Q. Do you mean by that that you are referring to the figures on that specific sheet of paper?

Mr. Haycraft: That is what he was asked about. is it not? I object to anything else.

Mr. Albert: I asked for Commission's Exhibits 481 and 482.

Mr. Haycraft: They are in evidence.

Mr. Albert: For identification. May I point to the ruling of the Examiner with respect thereto.

David S. Touff—For Commission—Cross.

7303

that Commission's Exhibits 482-A and B for Identification may be referred to in that manner? I ask for Commission's Exhibits 482-A and B for Identification.

Mr. Haycraft: I want to say this, Mr. Examiner, that 481, 482, the original exhibits that were identified, were offered in evidence as they were then prepared. They were admittedly not competent. Counsel for the respondent objected to them. They were rejected so far as the explanatory matter was concerned and admitted so far as the figures were concerned. In order to keep the record straight, we withdrew those exhibits and inserted and submitted exhibits that are now Commission's Exhibits 481 and 482, and withdrew the original exhibits which had been marked for identification because of the fact that they contained irrelevant, immaterial and incompetent matter. Now, it certainly would be no proper procedure for the respondents to be given access to papers which were not in evidence for the purpose of cross-examining a witness who did not identify the original exhibits.

7304

Examiner Bennett: Yes.

Mr. Albert: Now, if it please the Court—

Examiner Bennett: That matter has been up and disposed of and we are not going to reopen it. You may ask any questions you want to from the exhibits of that number in the record, but we are not going out hunting for papers that have been rejected as incompetent.

7305

Mr. Albert: Now, if it please the Court, may I point out with respect to the statement of counsel for the Commission that the matter contained in Commission's Exhibits 481 and 482-A and B for Identification was objected to originally on the

7306.

David S. Touff—For Commission—Cross.

ground that it could not be properly proved at the time against the respondent. Its competency of proof against the respondent by the Commission is one thing; when the respondent seeks to use the remarks of this witness in connection with those exhibits, that is another thing.

Mr. Haycraft: We did not—

Mr. Albert: In addition thereto, your Honor, I wish to point out that I have specifically offered those exhibits into evidence sight unseen, that I have withdrawn the objection that I made to Mr. Haycraft's offer of evidence. Now that we have the witness on the stand who prepared the remarks with respect to those exhibits which we only saw cursorily, am I to understand—I merely want to make certain, your Honor, so that I shall not pursue the subject any further—that I have no access to, nor will the Commission's attorneys furnish me, nor will the Court direct the Commission's attorneys to furnish me with Commission's Exhibits 482-A and B as originally marked for identification?

Examiner Bennett: So far as the Examiner is concerned, that matter is closed. I have no objection to the attorneys giving you those papers if they want to give them. They are in the custody of the attorneys.

7307

Mr. Albert: Very well, then. I make formal demand upon the Commission's attorneys to produce Commission's Exhibits 482-A and B for Identification, as originally presented by the Commission, containing remarks by this witness with respect to the figures now in evidence as Commission's Exhibits 481 and 482.

Mr. Haycraft: Counsel for the Commission respectfully declines the request.

7308

David S. Touff—For Commission—Cross.

7309

Mr. Albert: Very well.

Mr. Haycraft: On the ground that there is no logical reason why that should be done. The exhibits which are in evidence are in evidence. They were identified by Mr. Sappington when Mr. Sappington was cross-examined with respect to them. This witness was not interrogated with respect to these exhibits in question. He has given his testimony orally and is subject to cross-examination.

Examiner Bennett: Yes. Well, the exhibits are in evidence, of course, and may be used in cross-examination, the exhibits which are in the record. I think that the general subject was covered as to the effect on the departments, and would be relevant as to that particular thing.

7310

Mr. Albert: Exception.

Examiner Bennett: All right.

By Mr. Albert.

Q. Now, Mr. Touff, you testified that certain improvements in your department arose from the fact that a new style commenced at about June or July; was that correct?

A. Yes.

Q. What did you mean by that? A. I mean for the first time we had a demand, starting as early as the 1st of June, becoming very prominent about the 15th of June, for black daytime dresses. This was a demand which we had never experienced before, during the summer season, that carried through June and July, made it possible for us to sell dresses at \$16.95 where previously in the month of July the price line was fairly dormant.

7311.

Q. Did you have a sufficient supply of dresses? A. I would say no.

Q. What type of black dress are you referring to, Mr. Touff? Any particular type of black dress? A. Yes.

7312

David S. Touff—For Commission—Cross.

Q. What type? A. They were made—

Q. Sheer black dresses? A. They were shade sheers, marquisettes, chiffons; the best selling styles were tunics.

Q. Were what? A. Tunic styles.

Q. And is this the first time, in June, that J. L. Hudson ever had a demand for black sheer dresses, the first year?

A. It is the first year that there ever was so substantial a demand, so large a demand.

Q. Isn't what you mean that you were particularly successful this year in selling black dresses over previous years, rather than that there has been a sudden demand in June of 1936 for black dresses? A. That is not what

7313

I mean.

Q. Wasn't there ever a demand for black dresses prior in the summer, prior to 1936? A. I think I have said that before.

Q. And is the improvement, using the word generally, in your departments that you referred to, again speaking roughly, May, June and July? A. That is too rough.

Q. June and July? A. I think the testimony was made on the basis of July.

Q. Only July? A. (Witness nods head affirmatively.)

Q. Very well. Is the improvements in July due solely to the fact that there was this style change and you sold a lot of black dresses? A. I wouldn't say solely, but very largely.

7314

Q. The most important consideration? A. Yes.

Q. Mr. Touff, are you distinguishing 1936 from previous years upon the ground that the demand for these sheer dresses, and the type that you have spoken about, has been for black dresses rather than for navy or for dark brown? A. I don't think I understand your question.

Q. Are you distinguishing your improvement in July of 1936 over the previous years upon the ground that you sold a black dress? Do you understand the question?

A. (There was a short pause.) I am afraid I don't.

Q. Now, isn't it a fact that the type of dress you have spoken of, aside from the question that you called it a black dress, is sold year in and year out in June and July and the color generally varies between navy, dark brown and black, and that some years you will sell a lot of navy dresses, some years you will sell a lot of dark brown dresses, and some years you will sell a lot of black dresses, but the type of dress as distinguished from the color always has a demand in July or June; isn't that so? A. Now I understand your question. I will answer it.

Q. Go ahead. A. Normally the demand for dark dresses, navy and brown, which we normally have in the spring season, we begin to satisfy as early as the beginning of January. By the time we arrive at the 1st of June or the 15th of June that demand is pretty well satisfied. Any dresses that we sell after the 15th of June we generally sell at a lower price. This was a new developing demand, one that we had not experienced before at this time of the year. 7316

Q. And it is your contention that normally you sell sheer dresses in January? A. Yes, certainly.

Q. Do I understand you correctly, then, Mr. Touff, that prior to this year J. L. Hudson Company had never had such a demand for this type of dress at this particular time? A. We never previously had demand for marquisesettes, chiffon, sheer tunic dresses starting about the 15th of June and carrying through the month of July. 7317

Q. Did you know what I asked you about, Mr. Touff, that I was asking you about a dark sheer dress? I didn't say anything at all about tunics. A. You asked me—

Mr. Haycraft: I object to the question, then, if you didn't include—

By Mr. Albert.

Q. Then I will place it to you definitely, specifically.

Mr. Haycraft: The witness said—

7318

*David S. Touff—For Commission—Cross.**By Mr. Albert.*

Q. Is it your contention that J. L. Hudson Company, prior to 1936, July or June, never had a demand for dark sheer dresses? A. I have answered that question three times.

Q. That is the best answer that you have given? A. Yes, sir.

Q. All right. Who were the Guild houses that you used in Department 358? A. You mean the list of Guild houses that I gave you yesterday or every Guild house that I ever used in Department 358?

7319 Q. No, for 1935, the ones from whom you got the bulk of your goods? A. Milton Altmark.

Q. Yes. A. Straus-Miller.

Q. Yes. A. Mary Lee.

Q. Yes. A. Frank Staf-Friedlander.

Q. Yes. A. A. Goodman.

Q. Yes. A. Charles Lang.

Q. Who? A. Charles Lang, L-a-n-g.

Q. Who? A. Charles Lang.

Q. Yes. A. Jack Herzog.

Q. Yes. A. Kaplan & Moskowitz.

Q. Yes. What was that one? A. Kaplan & Moskowitz.

Q. Yes. A. Goldstein and Anton. I think that would cover the important ones.

7320 Q. Those are all the important substantial Guild houses from which you obtained most of your merchandise for Department 358, is that correct? A. Oh, I forgot Capri.

Q. Yes. A. I think that covers them.

Q. Is there anyone else you forgot? A. It is possible, but I can't recall them right now.

Q. Did you forget Harry Cohn? A. You asked me about Guild houses.

Q. That is not a Guild house? A. No.

Q. Now, yesterday you didn't tell us about Lang, Herzog, Kaplan & Moskowitz or Goldstein and Anton, did you? A. No.

Q. Did you forget them yesterday? A. No.

Q. What made you omit them? A. There was a difference in the question, I believe.

Q. What was the difference? A. Yesterday I understood the question to be that I was to give the Guild houses that I did the substantial part of my business with. I didn't understand the question that way this morning.

Mr. Albert: Will you be good enough, Mr. Stenographer, to read my question?

(The record was read.)

7322

A. Most of the names that I have given you are the most important names. Names that I added to-day were less important, but I used them.

Q. You don't consider the houses from whom you obtained the bulk of your goods as important, is that it? Collectively? A. I am afraid I don't understand that.

Q. All right. It is not important, Mr. Touff.

Mr. Albert: All right. It is not important now.

By Mr. Albert.

Q. Now, what was the non-Guild houses from whom you purchased substantially the bulk of your merchandise for Department 358 in 1935?

7323

Mr. Haycraft: I object to that question, as to the form of it. It is impossible to answer.

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: He has already testified he bought the bulk from the Guild houses; how could he buy

7324

David S. Touff—For Commission—Cross.

the bulk from the non-Guild houses?. He cannot purchase from two places.

Examiner Bennett: Well—

By Mr. Albert.

Q. Who are the most important non-Guild houses from whom you purchased merchandise in 1935? A. Harry Cohn, Famous Dress.

Q. Any others? A. I think not.

Q. Those are the only two non-Guild houses? A. Those are the only two that I can recall now.

7325

Q. Anybody else would be very small orders, if at all, is that it? A. Even these were.

Q. Now, what is there about the dresses that you purchased from Guild houses for Department 358 that you could not obtain from non-Guild houses? A. They were not as satisfactory for our purposes.

Q. That is, satisfactory with respect to what? A. Salability.

Q. Salability with respect to what? What types are there in those dresses that you purchased from the Guild houses that you could not get from the non-Guild houses? A. Well, I think we could write a doctor's thesis on it.

7326

Q. Well, if you think you can get a degree from it, let me have a minor thesis on it. A. Well, Mr. Albert, I explain it this way: We had been doing business with certain of these houses for several years. We had built up a demand for the type of merchandise that they made, as far as type, certain customers who demanded other types of merchandise that they made were not in the habit of coming to our store to look for it, as they knew, over a period of time, that they would not find it. It was essential that we have the types of merchandise that came from those few Guild houses. I find it impossible to buy enough dresses of that type to satisfy my demand. Number—that is only my beginning.

I think that the Guild houses monopolizing such a large part of that particular market, as they did, also monopolized a great part of the desirable novelty piece goods, trimmings, and so forth, and I think that the Guild houses handling such a large volume of the business in that field naturally would have more satisfactory styles than the houses—the Guild houses that were left.

Also, over a period of years' experience, we had found that certain people make better dresses, better manufactured dresses, better intrinsic dresses, better fitting dresses than other manufacturers. We had weeded out the ones that we felt that we could not make money on, or approach making money on, and those houses were largely in the Guild—

7328

Q. Well— A. —entirely in the Guild.

Q. Is that all, Mr. Touff? A. Yes.

Q. What is the type of dress that you were referring to for which there was a demand that you had built up in your store? A. The type of dress that is manufactured by the resources that I gave you.

Q. Mr. Touff, what is it in a dress that makes it salable? A. Well, you ask a question that demands general answers. I cannot answer it in anything but generalities.

Q. Tell me this: Can you say that the quality of the merchandise that is used in the dress contributes towards its salability? A. Sometimes.

Q. Would you say that needlework in a dress contributes towards its salability? A. Sometimes.

7329

Q. Would you say that the tailoring in a dress contributes towards its salability? A. Yes, sometimes.

Q. Would you say that the very name of the manufacturer who makes the dress contributes towards its salability? A. We have no names in our stock, or practically none.

7330

David S. Touff—For Commission—Cross.

Q. Would you say that the style of the dress contributes towards its salability? A. Yes.

Q. Now, all of these elements are elements that are taken into consideration by you when you go out to purchase a dress, are they not? A. Yes.

Q. When you are looking for a dress that is salable? A. Yes.

Q. Now, excluding all the other elements which you take into consideration, what do you look for in style that you think contributes towards the salability of a dress? A. Style must be wearable by a large number of people; it must be in a fashion trend—

7331

Q. Well— A. —and it must be at a point in a fashion trend—

Q. I am sorry. I did not hear that last. A. And it must be at a point in the fashion trend where a large number of people are wanting it.

Q. Now, then, a large number of people are wanting it. That contributes towards its re-order value, does it not, rather than your initial desire to purchase it? A. Well, I always try to buy dresses that will be re-ordered.

Q. Of course, but when you say that it must be at a specific point in the fashion trend, that it will be purchased again by others; that is a question of re-order, is it not? A. I don't think so.

7332

Q. You do not know for certain, when you purchase a dress from a manufacturer, predicated upon your knowledge of what will sell, that it actually will sell? A. No one does.

Q. Of course not. You rely upon your experience and your knowledge of dresses to purchase a type of dress, or a style of dress, that you think will sell? A. Yes.

Q. Do you not? A. Yes.

Q. Now, in what way do you determine whether or not a dress is in the fashion trend when you look at it? A. By a number of sources of information that come to me,

style information, that comes to me through periodicals, reports, and that sort of thing, and that development that I can see of the fashion trend in the goods that we are selling in our store.

Q. What do you mean by the fashion trend? A. That takes rather a long answer, if you do not mind.

Q. If it takes a long answer, we will have to have a long answer. A. All styles originate—

Q. After all, we have been here two months. You can hold us up another month. We don't care.

Mr. Martin: I move that be stricken.

Examiner Bennett: It may be stricken.

A. All styles—probably all styles—originate with a few very important people whom the rest of the world has a tendency to watch. Some few smart continental women, some few movie actresses, who have a reputation in their cities, or in the country, for being well dressed, whom other people imitate the things that they wear, are followed, or imitated, or are followed in the things that they wear by people whom they come in contact with. There is a selective process that goes on all the way down the line because some people don't like some of the things that they wear. Those high fashion pieces, as we call them, eventually reach the volume houses and again a process of selection is gone through, and eventually they become—some of the things that those people wear—become volume fashions. The history that they go through from the few people who originate them, to their volume acceptance, is their trend.

Q. That is your conception of what the fashion trend is, what you meant, that a dress must be in the fashion trend: is that it? A. That is a broad picture of it.

Q. Is not what you have discussed, rather, the mechanics, the process, the description of how a dress is copied down? A. Of course not.

7336

David S. Touff—For Commission—Cross

Q. It is not? Now, is it your contention that the actresses in Hollywood originate the styles which they wear?

Mr. Haycraft: I object. He did not say so.

Mr. Albert: I am asking him if that is his contention, your Honor.

Mr. Haycraft: No foundation laid for that.

Examiner Bennett: Well, I will let him answer if he has an answer.

Q. (Question read.) A. No, it is not my contention.

7337 *By Mr. Albert.*

Q. All right. Start back behind these Hollywood actresses, and tell us where the Fashion trend originates that these Hollywood actresses wear? A. Well, you have to go way back into history and make a study of the history of fashion from the earliest days.

Q. Yes. A. And decide where all these fashions originally—peasant costumes, historic costumes, military costumes, that they decided that certain dressmakers or certain couturiers decided they are going to use as an inspiration for a new dress.

Q. And who is that that decides that? A. Who is it that decides it?

7338 Q. Yes. A. A great many things that have to do with deciding it, Mr. Albert. I mean, if they have an oriental exhibit in London, as they had two years ago, we are liable to find a great many clothes in Paris of oriental inspiration—

Q. No, no, no—

Mr. Haycraft: Let him answer. Do not interrupt him.

Mr. Martin: Let him answer the question.

A. If we have an exposition in Paris, a Colonial exposition, showing all the French colonies, and all their handicraft, and so on, we find a great many things in the Paris openings that reflect that.

By Mr. Albert.

Q. And if they open up a hole in Egypt and find another Tutankhamen, then you have an Egyptian trend; is that not so? A. Well, it could conceivably be so.

Q. How? A. I say, it could conceivably be so.

Q. I mean, that is how you had that as the style trend a couple of years ago; is that not so? A. I don't recall it.

Q. Or is that before your time? A. How long ago was it? 7340

Mr. Martin: About twelve years ago.

Mr. Albert: Twelve years ago.

The Witness: I don't remember.

By Mr. Albert.

Q. You do not remember all the brown make-ups that the girls had on at that time, with their dresses?

Mr. Martin: Do you, Albert, do you?

By Mr. Albert.

Q. Would you say that the most recent trend in style developed as the result of—shall I say—influence of Mae West? 7341

Mr. Haycraft: Let him answer that question. It is all right. Just shows how silly the questions can be.

By Mr. Albert.

Q. Would you say that that was one of the recent trends in style? A. I would say that one of the recent trends in style, as recently as two years—

7342

David S. Touff—For Commission—Cross.

Q. Yes. A. —had evolved from an American historical costume that Mae West chose to wear in a certain picture.

Q. Right. And that developed a certain trend in the style of dresses, did it not? A. Temporarily.

Q. Well, all of these are temporary, are they not? A. I said that there was a process of selectivity involved. I think in that process of selectivity that fashion—had a tendency to go by the boards, I think it was discarded.

7343 Q. Now, granting that a certain trend of style develops, who is it that refines the style, the trend, for present-day conception? I mean, it is not your contention that when you have an oriental wave, or you have an Egyptian wave, or you have a throw-back to the Empire period, that the dresses of those respective periods are worn to-day exactly as they were in those times? I do not think you meant to contend that, did you? A. No.

7344 Q. All right. Now, who is it that adapts or refines or develops—using any word that you wish—these trends, so that they will be adaptable to present-day custom and uses? A. Well, they are probably changed by a great many people, initially. If we are speaking of the couturier in Paris, they are probably a great deal changed by the couturier's clientele. There are smart Parisian women, American, Continental women, Argentine, and so on, who make certain changes in those dresses as they buy them, and have them to suit themselves, rather than exactly as the couturier shows them. Then, I have doubt, as a matter of fact I know that when our American designers, and stores, go into the Paris market to buy those things, they make certain changes on them also before they bring them to this country, and when they are brought to this country, a great process of selection and change goes on, because some of them are copied exactly, some of them are not. Each designer, each buyer, each stylist does a little something to the dress, to the style that makes it very slightly different than the one before. Is that what you mean?

Q. And, therefore, is it your contention that couturiers of Paris, generally speaking, conform the trend of a fashion to the present-day custom, of usage, and that the American manufacturers take the trend from the Parisian couturiers? A. No, that is not my contention. My contention is that of the great many things that the Paris couturiers show, our American manufacturer, our American store, selects those few things which they think will be accepted by the American public.

Q. But the American manufacturer gets his inspiration in the first place from the Paris couturier; is that not so?

A. There are other fields of inspiration, and—

Q. Is not that the main source—

Mr. Martin: Let him answer.

Q. —Mr. Touff—

Mr. Martin: Let him answer. He had not finished.

Examiner Bennett: Have you finished?

The Witness: I had not finished.

Examiner Bennett: All right, finish.

A. There are other fields of inspiration besides the Paris couturier, although the Paris couturier is probably the most important. I think that answers both questions.

By Mr. Albert.

Q. Yes. Now, Mr. Touff, in the creation of a dress, how many component parts would you say must be taken into consideration? I mean, you have various types of sleeves, you have various types of cuffs, you have various types of tunic, you have various types of skirts. A. It is almost an infinity, Mr. Albert.

Q. Almost an infinity of varieties, of changes that you can have in a dress; is that not so? A. Yes.

7348

David S. Touff—For Commission—Cross.

Q. And that is equally so, is it not, to a great extent as to the changes which you can have in a dress even in a particular fashion trend; is that not so?

The Witness: Repeat the question, please.

Examiner Bennett: Do you understand the question?

The Witness: Could you rephrase it?

By Mr. Albert.

Q. You say in the fashioning of a dress there are so many elements to be taken into consideration, as to amount to almost an infinity of elements; is that not so?

7349

A. Yes.

Q. Now, that infinity of elements is naturally reduced when you have a dress that conforms in general to a certain fashion trend. I mean, if you have a certain fashion trend in which you are trying to manufacture a dress, you will naturally omit from your consideration in the manufacturing of that dress the oriental trend, if it happens to be an Empire dress; is that not so? A. Not all—

Q. To a great extent? A. A consistent designer would. They aren't all consistent.

Q. Yes, of course. Within a particular fashion trend?

A. Yes.

Q. Isn't the amount of elements that one may take into consideration in order to have a dress consistently in that fashion trend, doesn't that amount of elements, almost approaching infinity as far as listing them is concerned?

7350

A. If I understand you correctly, you want me to say that there are a great many styles that can be built in the same fashion trend. Is that right?

Q. A great many designs. A. Styles.

Q. Styles? A. Yes, that can be built in the same fashion trend.

Q. Almost infinite, isn't that so? A. A great many.

Q. Would you say that— A. It all depends on what you mean. If you mean if you take a velvet button off and put a jet button on, if that makes another style, then infinite.

Q. No, I do not think that you want to create the impression that that makes it another style, if it is a different style dress otherwise. A. I don't know what your impression is.

Q. Is that what you wish to contend, that there are some elements— A. You said that changing them would make a—you could make by changing them around you could make infinite variety within the same fashion trend.

Q. Yes. But what I mean by that is, in the dress proper, not in the ornaments which you put on the dress. A. Well, Mr. Albert—

7352

Q. Isn't that so? A. Mr. Albert, there are very few basic silhouettes that we use at any one time.

Q. Yes. A. Leading fashion prognosticators of the moment say that we have three. Some people disagree. Some say two, some say six, but there are only a limited number of accepted silhouettes, fashion bodies, and the rest of the dresses depend entirely for its change of ornaments and detail.

Q. And detail? A. Yes.

Q. Now, how many factors can a manufacturer take into consideration in the development of his silhouette of the dress, assuming for the sake of argument, purely, that there are three silhouettes without in any way being bound by your statement. A. Yes.

7353

Q. In the development of the silhouette of the dress, how many elements would he take into consideration?

Mr. Haycraft: You understand the question?

The Witness: I am afraid not.

Mr. Haycraft: I object to it.

The Witness: Could you illustrate it?

7354

*David S. Touff—For Commission—Cross.**By Mr. Albert.*

Q. Are you aware of what the three silhouettes are, Mr. Touff? A. I don't say that there are three.

Q. Well, of the possible three silhouettes, whether or not you believe there to be only two, three or one. A. Yes.

Q. How would you describe them, briefly? A. Well, now, this is another person's opinion, not my own. Is that a proper part of testimony?

Examiner Bennett: Yes. If it is the opinion of skilled persons in that business.

The Witness: I am not at liberty to quote the person's name.

7355

Examiner Bennett: Well, it isn't necessary to give the person's name if it is information that comes to you in the course of your study and work.

The Witness: We have a silhouette at the moment which is carried through for quite some time with a wide broad shoulder and a very slim skirt. That is the one that we are all very familiar with. We have the silhouette at the moment developing with a fitted waist, bodice and a flair skirt, wide skirt, a dress of peasant inspiration. We have a silhouette developing—we have a silhouette with us with a moderate shoulder line and a tunic, a full tunic starting from the waist line.

7356

Q. Mr. Touff, in this description of the three silhouettes you have mentioned, the wide shoulder, a moderate shoulder, a fitted waist, a narrow skirt, a flair skirt and a full tunic starting from the waist. You may have mentioned other elements but I couldn't get them quite that fast. Isn't that so? A. (Witness nods head affirmatively.)

Mr. Haycraft: Just speak up.

The Witness: Yes.

By Mr. Albert.

Q. Now, cannot those be consolidated in any number of combinations? A. If I understand your question correctly, the answer is no.

Q. Let me put it this way, Mr. Touff: Not all of these—cannot all of these various elements be interchanged?

A. You mean, can we put a tunic on a dress with a wide shoulder and a flaring skirt?

Q. If you want to make it that way. A. Not very well.

Q. It may develop, can it not? A. I cannot see it in the picture yet, no.

Mr. Albert: May I have a repetition of the witness' answer.

7358

(Record read.)

Q. Now, Mr. Touff, aside from the fact that you cannot see it yet, do you say that you cannot have a dress with a wide shoulder and a flair skirt with a tunic?

Mr. Haycraft: That is objected to unless—

A. You—

Mr. Haycraft: Just a minute. Unless the question confines it to a style trend or to a conceivable style trend.

Mr. Post: That is what a silhouette is, Mr. Haycraft.

7359

Mr. Haycraft: You can make any sort of a combination, I suppose, physically.

Mr. Albert: It is perfectly apparent what the question is directed to, with in the line of the inquiry.

Examiner Bennett: Yes. Well, of course—

Mr. Haycraft: I do not believe that there should be—

7360

David S. Touff—For Commission—Cross.

Mr. Albert: Is that objected to because the witness is merely taking so long a time to answer?

Examiner Bennett: I will let him answer it if it is understood that he is talking about the practical dresses made to manufacture and sold to his customers.

Mr. Albert: Certainly.

Examiner Bennett: That he is not speculating on any possible caricature of a dress that might be made.

The Witness: Well, your Honor, if I answered "yes" to his question it would be in the realm of speculation, certainly.

7361

Examiner Bennett: Well, I would expect you to answer the question in the light of what could be manufactured and sold to customers according to your experience.

The Witness: I don't believe it could be manufactured and sold under the present fashion trend.

By Mr. Albert.

Q. Under the present fashion trends? A. Yes.

Q. Isn't that so? A. Yes.

7362

Q. And had you been asked whether or not dresses of the Mae West silhouette would have been sold within the past two years, if you would have been asked that six or seven years ago, I believe your answer would have been that you don't see how it could possibly be so in the fashion trend of that time; isn't that so? A. I would have answered it as I answered your question before, it would be in the realm of speculation.

Q. Quite. But not within the realm of impossibility? A. No.

Q. Because it is in the realm of speculation because from one year to the next we don't know what the fashion

David S. Touff—For Commission—Cross.

7363

head will be; isn't that so? A. Very. Not from one year to the next, no.

Q. Well, from one year— A. Over a period of years.

Q. Over a period of two or three years. I think we all understood what I meant by that. A. (Witness nods head affirmatively.)

Mr. Haycraft: Mr. Examiner, may we have a short recess to let the witness get a drink of water?

Examiner Bennett: Yes. We will have a recess for ten minutes.

(There was a short recess taken.)

Examiner Bennett: Be in order, please. You may proceed.

7364

Mr. Albert.

Q. Now, Mr. Touff, in the adaptation, or, to use a general word, which I think you will understand as a general term, in the adaptation of the fashion trend, present-day custom and usage, will you concede or will you deny—that your thoughts—that each manufacturer contributes something to the particular model which reflects the fashion trend either in a grouping of certain elements that comprise the dress, merely in their arrangement, or else in the incorporation of a dress of a feature different from the general run of the particular time? A. I will concede that the manufacturers contribute something.

Yes. A. Not all manufacturers.

Not what? A. Not all manufacturers.

Not all? A. No.

Now, will you say that "some manufacturers," who contribute something in the model in the adaptation of fashion trend, for the greater part are Guild houses? No, I wouldn't say that at all.

Would you say that in the main the "some manufacturers" who contribute something in the model in the adaptation of the fashion trend— Will you repeat that?

7365

7366

David S. Toiff—For Commission—Cross.

(Question read.)

Mr. Albert: Withdrawn.

By Mr. Albert.

Q. Would you say that of the "some manufacturers who contribute something novel or different to the mode within the fashion trend, the first ones who do that are the Guild houses? A. No, I don't think I can concede that.

Q. Is that because there are a few others than the Guild houses who do contribute, or because you feel personally that there isn't a higher percentage of Guild houses who do that? A. I am afraid I don't understand.

7367

Mr. Haycraft: I object to the question, to the form of it. If he wants an explanation of his answer, let him ask for it.

By Mr. Albert.

Q. You have stated that you cannot say that of the manufacturers who contribute something different, something novel or something new in the adaptation of the fashion trend, present-day custom and usage, that you cannot say that the houses that first do that are for the most part Guild houses? A. Did you say "for the most part" the other time?

Q. Yes.

7368

Mr. Haycraft: You mean in this country?

The Witness: Well—

Mr. Haycraft: That is too general, Mr. Examiner.

The Witness: And it is a statistical question without any statistics.

By Mr. Albert.

Q. Well, when you stated the Guild manufacturers were the largest, you knew nothing about their volume of un-

or their volume of dollar units; did you? Now, predicated upon your same general knowledge of the industry, can you not tell me one way or the other—if you cannot, say so—that the Guild houses are generally, for the most part, the first ones to contribute, to add something to the models that reflect the fashion trend? A. No, I cannot admit that.

Q. Would you say that the non-Guild houses were the first ones that did that? A. I can't say that.

Q. Would you say that it was equal between the two types of houses?

Mr. Haycraft: Object to the question as assuming something which the witness hasn't testified to, and it is not in the record, and that is that any manufacturer originates anything.

7370

Mr. Albert: I think we are perfectly clear about what we are about, your Honor.

Examiner Bennett: I will let him answer.

Mr. Haycraft: I will ask the witness if he can answer that.

Examiner Bennett: Well, if he can't, he won't answer.

The Witness: Will you repeat the question, please?

(Question read.)

Examiner Bennett: Can you answer that?

The Witness: I can only answer that both types of houses contribute to that practice.

7371

Examiner Bennett: That is, you are not saying which is first or which is predominant?

The Witness: I wouldn't know that.

Mr. Haycraft: There were a couple of questions and answers that you didn't get.

Mr. Albert: I heard them.

7372

*David S. Touff.—For Commission—Cross.**By Mr. Albert.*

Q. So that you cannot tell in your opinion from your knowledge of the industry whether or not the Guild houses or the non-Guild houses contribute more to the differentiation, to the novelty of models within the fashion trend.

A. It is impossible to tell that.

Q. And there is nothing in your experience, there is no knowledge upon which you can draw in order to form an estimate or an opinion of that; is that so? A. That is so.

Q. Well, now, Mr. Touff, you have testified that prior to 1936 H. Fried Company was not a particularly important house to you and that in 1936 it did become an important source of supply; did you not? A. I didn't testify that they became an important source of supply, no. I testified that they were not an important source of supply in 1935.

Q. Didn't you testify that they became an important source of supply in 1936? A. I don't think so.

Q. I give you this question by Mr. Haycraft: "Q. Did you mention H. N. Fried in Department 369? Was that a source of supply? A. It was not an important source of supply until the beginning of 1936." Do you recall that testimony? A. Yes.

Q. Do you want to change your testimony that you did not testify that it was an important source of supply? A. Well, the choice of words was probably a little bit ill advised.

7374

Q. Who advised you to choose your words? A. I might have left out the word "important."

Q. You mean that it is not an important source of supply for 1936? A. No.

Q. Do you want to change your testimony because of the fact that prior to 1935 H. N. Fried & Company did not have an outstanding designer for its dresses, and that in the beginning of 1936 H. N. Fried & Company did obtain

an outstanding designer for its dresses, by reason of which the high style of its dresses improved considerably?

The Witness: Will you read that to me, please?

(Question read.)

The Witness: Can you make that a simple question? I know what you are driving at, but just make it an easy question.

By Mr. Albert.

Q. If you know what I am driving at, in the light of the fact that you know what I am driving at, answer and we will save time. A. H. N. Fried was not an important source of supply to us in 1935.

7376

Q. Yes. A. They were anything but an important source of supply to us in 1936. My choice of words in yesterday's testimony was ill-advised.

Q. So that you want to— Have you any knowledge of the volume of business that you did with H. N. Fried & Company up to July of 1935? A. You mean for the previous six months?

Q. Yes. A. Well—

Q. A rough— A. —a very vague guess.

Q. A rough guess. A. Less than \$500.

Q. Less than \$500? A. Yes.

Q. Have you any idea of the amount of the volume of your business with H. N. Fried & Company from July, 1935 to January 1, 1936? A. Oh, five or six hundred dollars.

7377

Q. Same amount. That is, with respect to all departments? A. It is only used in Department 369.

Q. H. N. Fried only sold to Department 369? A. Yes.

Q. Do you know the volume of your business with H. N. Fried & Company after January 1, 1936? A. Yes.

Q. What would be your estimate of it?

7378

David S. Touff—For Commission—Cross.

The Witness: Your Honor, I think that it might be embarrassing information to give to competitors, and embarrassing information for manufacturer.

Mr. Albert: Are we suddenly becoming embarrassed, your Honor, after a revelation of all of the amount of his volume?

Examiner Bennett: The revelation of whatever he has given thus far was with the consent of the management, for 1935, and if the management wants—or the attorney who is here present for J. Hudson Company—wants to release the witness that matter, why, it is all right, but without the release I cannot try to force him.

7379

Mr. Meder: Your Honor please, we would prefer that he not answer such a question as that.

Examiner Bennett: All right.

Mr. Meder: You can see the reason for it.

Mr. Albert: I confess I cannot.

By Mr. Albert,

Q. Mr. Touff—

Mr. Albert: May I have Commission's Exhibit 479-A?

Mr. Haycraft: Do you want the witness to look at it?

7380

Mr. Albert: Yes.

By Mr. Albert,

Q. Will you look at Commission's Exhibit 479-A, subdivision under Department 369, and tell me how much goods you had outstanding under order with H. N. Fried & Company on February 15, 1936? A. It is very funny—it is \$947.

Q. So that when would you say that goods was placed on order? A. It was placed on order the first week in January.

Q. How? A. The first week in January.

Q. Were there any deliveries against that order? A. Yes.

Q. So that in the light of the fact that you do not wish to disclose the amount of the order, am I correct in saying that the order that you placed with H. N. Fried & Company, commencing January, 1936, is somewhere in excess of \$947?

Mr. Haycraft: I object.

Mr. Albert: I think that is reasonable, your Honor; I am not asking for the exact figure. 7382

Mr. Haycraft: You can draw your conclusions from it, but I object to the exact question.

Examiner Bennett: You may answer.

By Mr. Albert.

Q. Is that not so?

The Witness: You say I may answer?

Examiner Bennett: Yes.

By Mr. Albert.

Q. Yes. A. Yes.

Q. So that in the first month of 1936 the total of your orders on H. N. Fried & Company was in excess of your entire order for 1935, roughly speaking? 7383

Mr. Haycraft: Objected to as irrelevant and immaterial. I do not see what probative value there is to that question.

Examiner Bennett: Well, it is in the record.

Mr. Albert: It has quite a bearing on the precise question, if it please the Court.

7385

David S. Touff—For Commission—Cross.

Examiner Bennett: I say, it is in the record.

Mr. Albert: Very well.

Examiner Bennett: I do not see what we are gaining by asking the question.

By Mr. Albert.

Q. Now, then, Mr. Touff, will you tell me what it is about H. N. Fried & Company that resulted in your placing orders with them in the month of January in excess of the total amount that you had placed with that firm in 1935?

7385

Mr. Martin: That is objected to.

A. Yes.

By Mr. Albert.

Q. If you can. A. Yes.

Mr. Haycraft: Objected to—not in conformance with the facts in the record. Five and six make eleven hundred, in my addition?

Examiner Bennett: Well, I will sustain it on the ground of being totally irrelevant, as far as I can see.

Mr. Albert: It is merely a foundation question, your Honor.

7386

Examiner Bennett: Well, foundation for what? For contradicting the witness' testimony?

Mr. Albert: That is right.

Examiner Bennett: Well, on the same point that you have already contradicted it—

Mr. Albert: If your Honor pleases, if you think I have already contradicted the witness, I will desist.

Examiner Bennett: Why; surely, you have already contradicted him.

Mr. Albert: Thank you.

Examiner Bennett: So I see nothing in this.

By Mr. Albert.

Q. Now, Mr. Touff, do you know Emma Kirby? A. No.

Q. Do you know of her? A. Yes.

Q. Who is she? A. Who is she? She is a designer.

Q. And quite a capable designer, is she not? A. I would prefer not to pass opinion.

Q. Would you consider that she has an excellent reputation in the industry and is well known in the industry? A. Do you ask those as two separate questions?

Q. Well, answer them separately. A. She is very well known in the industry. 7388

Q. Would you say that she has an excellent reputation as a designer? A. I don't know.

Q. By whom is she employed at the present time, if you know? A. There has been a lot of confusion there in the last few weeks, and I don't know.

Q. As a matter of fact, Mr. Kirby, do you not know that the lady in question is a designer of dresses for H. N. Fried & Company? A. Ha, ha. I don't want to be Mr. Kirby.

Mr. Post: May I say, off the record—
(There was a discussion off the record.)

The Witness: What is the question?

(Question read.) 7389

A. That she is a designer of dresses for H. N. Fried & Company; is that the question?

Q. Is the question, yes. A. No, I don't know.

Q. Do you know that she was a designer for H. N. Fried & Company in January, 1936? A. Yes.

Q. Do you also know that Miss Kirby was not a designer, was not associated with Fried & Company for the whole of 1935? A. Yes.

7390

David S. Touff—For Commission—Cross.

Examiner Bennett: What do you mean by that any part of 1935, or——

The Witness: I think you said for all of 1935 that she was not associated with Mr. Fried for all of 1935.

Examiner Bennett: At any time?

By Mr. Albert.

Q. That she only went into H. N. Fried in the latter part of 1935? A. Yes, that is the question I was asked.

Examiner Bennett: Yes, I wondered, because the question was ambiguous.

7391

Mr. Albert: Thank you, your Honor.

By Mr. Albert.

Q. Now, Mr. Touff, you have testified that by reason of the red carding, it was impossible for you to purchase dresses that were satisfactory for your departments? A. I did not testify to that.

Q. What did you testify? A. I think it is in the record. I said enough dresses, enough satisfactory dresses.

Q. Enough satisfactory dresses? A. Yes.

Q. Did you mean by that in number or in style? A. Well, that question would have to be answered both.

7392

Q. That is, you did not have a sufficient number of dresses, and you did not have a sufficient number of dresses of the style to which your customers were accustomed; is that it? A. I could have bought all my dresses in one style, and I would have had the right quantity.

Q. Yes. A. I had to have both variety of style and quantity.

Q. Right. I believe you also testified that it was absolutely essential that you have the best style, did you? A. I either testified that, or some of the best style dresses.

Q. And, is it, therefore, your contention that the Guild houses have the best style dresses? A. No, it is my contention that they have some of the best style dresses.

Q. And you can get good style dresses from other sources than the best styles? A. Some.

Q. Some. Well, now, let us put it this way, Mr. Touff:—And perhaps we can get off the subject: I believe you are aware substantially of what the Guild's contentions are with regard to this proceeding, are you not?

Mr. Haycraft: That is objected to.

Mr. Albert: It is a foundation question.

Mr. Haycraft: I object to it.

Examiner Bennett: Well, I will let him answer 7394
if it is a foundation question? If you are going to ask him on this proceeding—

Mr. Albert: No, I am not, your Honor. Of course not.

The Witness: Will you repeat the question?
(Question read.)

Examiner Bennett: If you are not, why, say so.

The Witness: I am not.

By Mr. Albert.

Q. All right. Let me put it this way: The Fashion Originators Guild contend that manufacturers originate designs in dresses. Are you aware of that? Mind you, I am not asking you whether you agree with it or not; I am asking you whether you are aware of the fact that that is a contention of the Fashion Originators Guild? A. Yes, it is. 7395

Q. You are. And that there is a contention of the Fashion Originators Guild that a manufacturer who originates a design within the fashion trend has a right to be protected against that original design being copied; are you aware of that? A. That that is your contention?

7396

David S. Touff—For Commission—Cross.

Q. Yes. A. Yes.

Q. Are you aware of the fact that there is also contend among manufacturers in the industry that there is such evil as style piracy?

Mr. Haycraft: I object to that; not an issue this case.

Examiner Bennett: Read the question.
(Question read.)

Examiner Bennett: Are you connecting that with the Guild?

Mr. Albert: Yes, your Honor.

7397

Examiner Bennett: The question does not connect it up.

Mr. Albert: Read the question.
(Question again read.)

By Mr. Albert.

Q. —by manufacturers in the industry—assuming that I mean members of the Fashion Originators Guild.

Mr. Haycraft: I object to that, Mr. Examiner.

Examiner Bennett: Well, I am going to let him answer. If we are going to have a question founded on all this—go ahead. If you are aware of it, why say so, and if you are not, why, say so.

3798

A. Yes, I am aware of it.

By Mr. Albert.

Q. Are you also aware of the fact that it is the contention of retailers who have co-operated, and are co-operating with the Fashion Originators Guild, that there is an evil in the industry known as style piracy?

Mr. Haycraft: That is manifestly objected to. No foundation at all in the record, and no place in the pleadings.

Mr. Albert: If it please the Court, I am asking if this man knows that that is a contention in the industry among retailers who are co-operating with the Guild.

Mr. Haycraft: That is off the point.

Examiner Bennett: Is that a foundation question?

Mr. Albert: A foundation question.

Mr. Haycraft: There is not such a question either in the record or anywhere else.

Examiner Bennett: Yes. Well, I sustain an objection to that.

Mr. Albert: Exemption.

7400

By Mr. Albert.

Q. Are you aware of the fact that it is the contention, or the claim, of certain retailers who are members of the Fashion Originators Guild, who are co-operating with the Fashion Originators Guild, that an evil exists which is harmful to retailers, known as style piracy? What is your answer?

Examiner Bennett: Answer it, if you know anything about it.

A. I am not aware of it.

Q. You are not aware of that contention among retailers— A. No.

Q. —who are co-operating with the Fashion Originators Guild? A. No.

Q. Do you agree that there is such an evil in the industry as style piracy?

Mr. Haycraft: That was not the first of it.

Mr. Albert: Let me ask it in the order I like, Mr. Haycraft.

Examiner Bennett: Yes.

A. Yes.

7401

7402

*David S. Touff—For Commission—Cross.**By Mr. Albert.*

Q. There is an evil in the industry of style piracy?

Yes. You understand that that is my personal opinion.

Q. Yes, of course.

Mr. Haycraft: Do you want the answer to the rest of your question?

Mr. Albert: No.

Mr. Haycraft: All right.

Mr. Albert: I have got enough.

7403

Mr. Haycraft: Well, I move to strike all of this question as originally propounded and the present question, as being of no probative value to the issues in this case, and as irrelevant and immaterial to the issues in this case and of no probative value in this proceeding.

Mr. Albert: Most of them are irrelevant, if please the Court—we have had that out before.

Examiner Bennett: I think I will grant the motion to strike, if that is what you are after. I think it is just playing with the situation——

Mr. Feldman: Oh, no.

Examiner Bennett: I do not believe it has any bearing.

7404

Mr. Albert: If your Honor please, it is the contention of the respondent in this case that if there is an evil existent in the industry, ruinous to the component parts of the industry, manufacturers and retailers——

Mr. Haycraft: He did not say that.

Mr. Albert: —and which is injurious to the customer——

Mr. Haycraft: He did not say that.

Mr. Albert: —that, if there is such an evil, the industry has a right to take steps to correct the

evil. Now, I believe I have elicited from this witness the fact that there is such an evil as style piracy.

Examiner Bennett: Oh, the fact of the opinion that he has, that there is such an evil—now, as I understand it, and I think that matter has been gone into, probably repeatedly in the record—there is no contention on that particular issue on the part of the Commission.

Mr. Feldman: Yes.

Mr. Albert: Your Honor pleases, we had this identical matter brought up, I believe it was either yesterday or the day before yesterday, and I put the direct question to the Commission, and it certainly would have saved a great deal of time, both to-day and in the future—I put the direct question to the Commission—will they concede that there is an evil in the industry known as style piracy, and that it is injurious to manufacturers and to retailers—and they refused to make that concession, if your Honor pleases.

Examiner Bennett: I understand—I do not know—I think that is probably true, but they have contended that it is not an issue in this proceeding.

Mr. Albert: Well, if your Honor pleases—

Examiner Bennett: And they are making affirmative issues. Now, when you come to present your case, why, that may be another matter—

Mr. Albert: If it please the Court—

Examiner Bennett: —that I will have to pay attention—

Mr. Albert: Will your Honor bear with me just a moment?

Examiner Bennett: I will have to pay attention to what you say when you present your case.

7408

David S. Touff—For Commission—Cross.

Mr. Albert: Yes, your Honor, but will you with me a moment?

Examiner Bennett: Yes.

Mr. Albert: It is all very well for the Commission's attorneys to say that that is not in issue in these proceedings, and with all due respect to the Commission's attorneys, that is not a matter for their decision. We contend, if it please the Court, that in so far as the Circuit Courts of Appeals are concerned, and the United States Supreme Court, the question of whether or not a program is directed at eliminating an evil known to exist in the industry is a matter which has a great deal of probative weight in the determination of whether or not that program is illegal, was in restraint of trade or not. Now, then, I believe, therefore, that the witness should be permitted to bring out from hostile witnesses presented by the witness in support of this case, the very vital proposition, and the very subject, that there is an evil in the industry, such as style piracy, which will add so much more probative force to the respondents' contention that there was such an evil.

7409

Mr. Feldman: Oh, I think the code cases are very clear on that point.

Mr. Haycraft: How about the Sugar Institute?

7410

Mr. Feldman: How about the Sugar Institute? Where they said, for the purpose of eliminating the boycott was proper.

Mr. Haycraft: A boycott was never proper.

Mr. Feldman: Did not say anything of the kind in the Sugar Institute.

Mr. Haycraft: You better read it again, George.

Examiner Bennett: If it is in the record—if it is in the record you may make any use of it which you choose.

Mr. Albert: Now, if your Honor pleases, in order to obviate this recurring discussion with respect to the matter in hand, in order that respondents may know exactly where they stand in attempting to meet the issues presented by the Federal Trade Commission, its attorneys, I ask the Federal Trade Commission's attorneys now formally, as to whether or not they will concede that there is an evil in the industry known as style piracy. Now, they have been very equivocal about admitting or denying it, and they refer us back two months ago to a stipulation that was entered into. I think it would be very simple, and very helpful, and of great assistance to all that are concerned, if we could have a declarative statement, a very simple one, from the Commission, upon that point. It would take a great deal less time than all of this discussion which has now twice arisen within the past two days.

7412

Examiner Bennett: Yes. May I—

Mr. Martin: May I ask what date this was two months ago that we entered into this stipulation?

Mr. Haycraft: I made the statement—I told them again this week—I do not see why it has to be repeated all this time.

Mr. Albert: Then am I to understand—

Mr. Haycraft: If the Examiner wants me to, I will make it again.

7413

Mr. Feldman: The first day or second day.

Examiner Bennett: I wish you would reply distinctly to the—

Mr. Haycraft: The reply is "no concessions"; is that plain enough?

Mr. Feldman: Well then—

Mr. Albert: There you are, your Honor. May I ask now, that your Honor, in the light of that

7414

David S. Touff—For Commission—Cross.

statement by counsel, reconsider your determination to strike from the record this hostile opinion that there was such an evil as style piracy in order that the record may be clear with respect thereto?

Mr. Haycraft: Well, then, Mr. Examiner, I respectfully suggest that that is a part of their affirmative case. If they are going to make it an issue we may take it before the Commission at that time. In other words, if the time ever comes when the respondent attempts to make that question an issue, it may be necessary to take this case to the Commission to decide whether it will be an issue and I certainly do not want the record—

7415

Mr. Albert: At this time, your Honor—

Examiner Bennett: It may be plead. Of course when we come to the respondents' case that is a different proposition.

Mr. Albert: May I point this out, your Honor that if the witnesses presented by the Federal Trade Commission, who certainly are, to say the least, biased as against the F.O.G.A., all admit that there is such a thing in the industry as an evil, known as style piracy, that then and in that event it becomes a grave question for the consideration of the Commission, as to whether or not the respondent will be required to make answer to the Commission's charge—

7416

Examiner Bennett: Yes.

Mr. Martin: Does counsel contend that the witness showed his bias when he said that that was an evil?

Mr. Albert: No. But, if your Honor please, if a witness in J. L. Hudson Company, who has been red carded—

Examiner Bennett: Yes.

Mr. Albert: —will admit that there was such a thing as style piracy—

Examiner Bennett: He said it was his opinion, he was not speaking for J. L. Hudson Company.

Mr. Albert: Your Honor please, his opinions have been taken as gospel here by the Federal Trade Commission's attorneys down to this point, so that to suddenly say that he is not qualified, or that his opinion means nothing—

Examiner Bennett: No.

Mr. Albert: That he can only have an opinion on one thing and not another.

Mr. Haycraft: I haven't any quarrel with his opinion.

Examiner Bennett: We are wasting a whole lot of time. I have told you what my decision is, and I have told you that I was not going to change it at this time.

Mr. Albert: Very well, your Honor. Exception.

Examiner Bennett: You have it in the record. It is there physically and make any use of it you choose.

Mr. Albert: Thank you.

Examiner Bennett: I think most of the testimony of this witness upon fashions is wholly at variance with that statement which you made as to his opinion.

By Mr. Albert.

Q. Now, Mr. Touff, will you please take Commission's Exhibit 523.

Mr. Martin: If you will give it to him.
(Commission's Exhibit 523 was handed to the witness.)

7420

*David S. Touff—For Commission—Cross.**By Mr. Albert.*

Q. Mr. Touff, will you be good enough to tell me when you obtained the information that Gillis Gowns, Inc., was a Guild house? A. I got that information from the New York office.

Q. What do you mean by your New York office? A. I mean the A.M.C. office.

Q. Do you know where they got the information from? A. No.

7421

Q. So that aside from the fact that you made inquiry of them you have no knowledge of the facts that—as to the fact that Gillis is a Guild house? A. Gillis—no, I have no.

Q. Don't you know as a matter of fact that Gillis Gowns, Inc. never has been at any time a member of the Fashion Originators Guild? A. No, I don't know that.

Q. Yet, without checking up on this you have presented this list as an accurate list? A. There is no way of finding out who belongs to the Guild.

Q. And I assume you got the same information in the same manner with respect to Phyllis Martin, Inc.? A. Yes.

Q. Don't you know, as a matter of fact, that Phyllis Martin, Inc., has never been a Guild house? A. No.

7422

Q. Mr. Touff, you relied upon the A.M.C. for your information as regards what are and what are not Guild houses. Did you also make any inquiry from them as to possible sources of supply?

Mr. Haycraft: Objected to.

Mr. Albert: We have in here, if it please the Court, a tabulation of sources of supply prepared by this witness. I wanted to get a break-down of that list.

Mr. Haycraft: The witness testified that that list was prepared from the Fairchild Directory and not from anything that the A.M.C. had.

Mr. Albert: If he gets a list from the advertisements appearing in the New York Evening Journal, the Commission wants that and doesn't want the facts brought out as to the other possibilities of preparing a list from more reliable sources or from more inclusive sources?

Mr. Haycraft: Then, I take it, you want to concede for the record that the list prepared by the A.M.C. is more reliable and more conclusive than the Fairchild list which counsel for the respondent, Mr. Weisman, used on more than one occasion in his cross-examination of Commission's witnesses?

Mr. Albert: I don't say that in the least. I don't say that in the least.

7424

Mr. Haycraft: It sounded like it.

Examiner Bennett: You may find out whether he checked the list by any outside source.

By Mr. Albert.

Q. Did you use any other source for your information aside from—what is that?

Mr. Post: Exhibit 524. But that is no list.

By Mr. Albert.

Q. Did you use any other source for compiling Commission's Exhibit 523 than the Fairchild Women's Wear Directory of New York, advanced fall, 1936, being Commission's Exhibit 524 for Identification? A. I don't think so.

7425

Q. Well, don't you know— A. It was made up quite some time ago. I think—I think I used this exclusively (indicating Exhibit 524).

Q. Exclusively? How long ago did you make up that list? A. Oh, about four weeks ago, or more.

7426

David S. Touff—For Commission—Cross.

Q. Is it at least four weeks ago that you made up the list? A. Yes. There was one correction made on it since then.

Q. Can it possibly be more? A. Yes, it can possibly be more.

Q. Now, is this list (indicating Commission's Exhibit 523) an abstract of the names appearing in Fairchild, or does this list indicate (indicating Commission's Exhibit 523) a repetition of all of the names appearing in Fairchild in the various price line? A. They are not classified by price line in this book.

7427 Q. Mr. Touff, you have here a list of fifteen manufacturers in the price line \$12.75 to \$14.75. Are there any additional manufacturers in that price line whose names appear in Fairchild and do not appear on Commission's Exhibit 523 within that price line? A. There are manufacturers who make \$12.75 dresses whose names are not on this chart, whose names are in Fairchild's.

Q. Are in Fairchild's? A. Yes.

Q. So that Commission's Exhibit 523 is a selective list of the houses listed in Fairchild's in the various price lines set forth in Commission's Exhibit 523; isn't that so? A. No, that is not so.

Q. How many additional manufacturers in excess of fifteen are there in Commission's Exhibit 524 who are not listed on Commission's Exhibit 523? A. I don't know.

7428 Q. But there are some? A. Yes.

Q. You have no idea of the number? A. No.

Q. Now, in the \$16.75 price line there are fourteen houses listed. Have you any idea as to how many additional manufacturers there are in that price line listed in Fairchild's whom you have not listed in Commission's Exhibit 523? A. There are no manufacturers of misses daytime dresses costing—who are generally considered \$16.75 houses, or whom I would consider \$16.75 houses who are listed in the Fairchild Directory that are not on this page.

Q. So that the total number of \$16.75 houses listed in Fairchild's is fourteen? A. No, I didn't say that.

Q. Whom you would consider \$16.75? A. I didn't say that, either.

Q. How else did you classify it? A. That I know.

Q. That you know? A. (Witness nods head affirmatively.)

Q. Did you make any inquiry or any investigation from any other list aside from Fairchild's? A. I have been continually making inquiry.

Q. Yes. And from what list did you make inquiry? A. None, specifically.

Q. The only list that you chose was the Fairchild list? A. That is the list I chose to make this report.

7430

Q. Yes. Now, then, the \$16.75 price line, there are seventeen manufacturers set forth. Are there any additional manufacturers named in the Fairchild Directory who are not named in your list, being Commission's Exhibit 523? A. There are no houses making \$18.75 to \$25 misses' daytime dresses that I know listed in the Fairchild Directory.

Mr. Post: That are not on the list.

The Witness: That are not on my list.

By Mr. Albert.

Q. Did you examine any other directory in an effort to find whether or not there were additional manufacturers other than those named in your Commission's Exhibit 523?

7431

A. Not for the purposes of making this report.

Q. And is the same true of your \$29.75-up column?

A. Yes, sir.

Q. And of the other columns? A. Yes.

Q. Are you aware of the fact that the A.M.C. prepared a list of resources for members of the A.M.C.? A. Yes.

7432

David S. Touff—For Commission—Cross.

Q. The question is, whether or not Berke-Vogel, listed on the A.M.C. list of \$12.75 houses who are not—who were non-Guild members, is contained in your exhibit, Commission's Exhibit 523?

Mr. Haycraft: Objection to the reference to the Commission's Exhibit 523.

Examiner Bennett: I will overrule it for the purpose. I think your statement as to the purpose covers the matter.

A. Berke-Vogel—

7433 *By Mr. Albert.*

Q. No. Is it listed, Mr. Touff? A. It is not listed.

Q. Is Berke, Press & Berke listed? A. No.

Q. Is Bowdin & Townen contained in your list? A. No.

Q. Is Harry Butler contained in your list? A. No.

Q. Is Darny Frocks contained in your list?

Mr. Haycraft: How do you spell that?

Mr. Albert: Darny, D-a-r-n-y.

A. No.

By Mr. Albert.

Q. Is Harry Harston Frock contained in your list? A.

7434 Yes.

Q. Is Milton Russell contained in your list? A. Milton Combs Russell.

Q. Yes. A. He is not in this list.

Mr. Haycraft: K-o-h-n?

The Witness: Yes.

By Mr. Albert.

Q. Is Konette Frocks contained in your list? A. No.

Q. That was added on? A. Yes. That is, I think it is.

Mr. Haycraft: The answer is "Yes"?

The Witness: The answer is "No."

By Mr. Albert:

Q. All right. Is G. & J. Lipman—no, excuse me. Withdrawn. Is McKenzie & Fine contained in your list? A. No.

Q. Is Mattie Lucille contained in your list? A. No.

Q. Is New York Dress & Costume contained in your list? A. No.

Q. Is Pickwick Dress contained in your list? A. No.

Q. Is Rembrandt Frock contained in your list? A. No.

Q. Is Rothbardt Dress contained in your list? A. No.

Q. Is Sackin Lindner contained in your list?

7436

Mr. Haycraft: I have an objection to this whole line of cross-examination, Mr. Examiner?

Examiner Bennett: Yes, you have an objection.

Mr. Haycraft: As I said before, it is not intended to be a complete list of all the sources in the country. It is only as to the resources that the witness was familiar with and experienced with.

Examiner Bennett: Yes. Well, that is what we will find out after he gets through. If it doesn't mean anything, why, it doesn't. I want to see.

Mr. Haycraft: What is the last one?

Mr. Albert: Sackin Lindner.

7437

Mr. Haycraft: How do you spell it?

The Witness: S-a-c-k-i-n.

By Mr. Albert:

Q. Is Normal Stuart contained in your list? A. Yes—
No. No.

Q. Is B. Tobias contained in your list? A. No.

7438

David S. Touff—For Commission Cross.

Q. Is Weingartner Dress contained in your list? A. No.

Q. Is Alexander White contained in your list? A. No.

Q. Is Whitmore contained in your list? A. Not in this list.

Q. Now, all of these dress houses that I have listed that I have named, are contained in the list submitted by the A.M.C. for the use of its buyers for the stores connected with the A.M.C.; is that correct? A. Yes.

Examiner Bennett: Were these houses with which you did business, these houses on the A.M.C. list?

The Witness: Your Honor, most of the houses that he has interrogated me about are in the other exhibits which I gave at the same time as this one.

7439

Examiner Bennett: Oh, I see.

The Witness: And the others I will be examined about later, I think.

Examiner Bennett: I see. All right.

Mr. Haycraft: Did you do business with them? That is the question the Examiner propounded.

The Witness: I know every single house that he asked me about and I have done business with most of them.

Examiner Bennett: I see. All right. That is they were included then in your available resources of supply and you still say that your resources were inadequate?

7440

The Witness: Yes, sir.

Mr. Haycraft: I think, Mr. Examiner, the point here is they weren't in the price line.

Examiner Bennett: Yes, I understand.

Mr. Feldman: They are on the price lines.

The Witness: No, they aren't.

Mr. Feldman: According to the A.M.C. list, they are.

David S. Touff—For Commission—Cross.

7441

The Witness: According to the A.M.C. list—I mean, according to the list of this time, George, Milton Altmark might be a \$12.75 manufacturer, but you know that he isn't, according to this kind of a list.

Mr. Haycraft: In other words, Mr. Examiner, what we are doing here is proving the——

Mr. Post: You mean the A.M.C. list.

Mr. Haycraft: Proving the unreliability of the A.M.C. list, Commission's Exhibit 475 now.

The Witness: No, we aren't proving that, either. Are we off the record or not?

Examiner Bennett: No, you are not off the record.

7442

The Witness: Well——

Examiner Bennett: We will make a recess until two for lunch.

(Whereupon, at 12.35 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION. 2 P. M.

Examiner Bennett: Be in order, please. You may proceed, Mr. Albert.

Mr. Albert: May we have Commission's Exhibit 525? Where is Commission's Exhibit 450?

7443

(Papers handed to counsel.)

By Mr. Albert.

Q. Now, Mr. Touff, you told us that certain of the names of manufacturers who appeared on the A.M.C. list, Commission's Exhibit 450-E, and who do not appear on Commission's Exhibit 523, appear on Commission's Exhibit 525; is that not so? A. Yes.

7444

David S. Touff—For Commission—Cross.

Q. Now, of those names does Berke-Vogel appear on Commission's Exhibit 525? A. No.

Q. Does Harry Butler appear on Commission's Exhibit 525? A. No.

Q. Does Darny Frocks appear on Commission's Exhibit 525? A. No.

Q. Does McKenzie-Fain appear on Commission's Exhibit 525? A. Well, I don't think it—it does not, no.

Q. Does Rothbart appear on Commission's Exhibit 525? A. No.

Q. Or does Alexander White appear on Commission's Exhibit 525? A. No.

7445

Mr. Albert: Where is Commission's Exhibit 523?
Mr. Martin: Here.

By Mr. Albert.

Q. Now, turning to the fifth column on Commission's Exhibit 523, headed "Misses' Evening." A. Yes.

Q. And comparing with Commission's Exhibit 450 as to a similar heading of the list of manufacturers manufacturing misses' evening dresses, does Eugene Party Frocks appear on Commission's Exhibit 523?

Mr. Haycraft: Same objection to this line of examination.

Examiner Bennett: He may answer.

7446

A. No.

By Mr. Albert.

Q. Does Fashion Dress appear on Commission's Exhibit 523? A. No.

Q. Does George Jackson appear on Commission's Exhibit 523? A. No.

Q. Nor does Novel Dress appear on Commission's Exhibit 523? A. No.

David S. Touff—For Commission—Cross.

7447

Q. Does Rosetta Gowns appear on Commission's Exhibit 523? A. No.

Mr. Albert: Now, if your Honor pleases, I do not want to take up too much time with this. Does your Honor believe that this is a sufficient cross-section demonstrating the various manufacturers that have been omitted from Commission's Exhibit 523?

Examiner Bennett: I do not think we have had the whole story.

Mr. Albert: No, I mean so far as the market, that—

Examiner Bennett: Well, I know. I think that such as it is we have had plenty of it, but I think that the vital part of the story, as I understand it, is left out. If you will give me those three documents, I will ask some questions—I may be wholly in error, but I am sort of confused as to the situation, and the confusion arises from this sort of—from this examination.

7448

Examiner Bennett.

Q. Is the Fairchild Directory classified as to price lines? No, sir.

Q. Who made the classification as to price lines that appear in your list? A. I did.

Q. As taken from the Fairchild Directory, you did? A.

7449

Q. That is your own price line classification? A. Yes.

Q. Does that price line classification coincide with the price line classification of A.M.C.? A. Well, I will have to explain that, your Honor.

Q. I beg your pardon? A. I will have to explain that.

Q. Yes. That is what I wish you would explain. I get the confusion as to— A. Manufacturers are very frequently known as manufacturing dresses of a certain price.

7450

David S. Touff—For Commission—Cross.

Q. Yes. A. And we categorize them in the market as a \$10.75 manufacturer, or a \$16.75 manufacturer. That does not mean that at any time that manufacturer makes only dresses of that price; the bulk of his dresses may be that price, but the \$10.75 manufacturer—and I know \$10.75 manufacturers who make garments as high as \$49.50 cost—

7451

Q. Yes. A. —I would still classify that house as a \$10.75 manufacturer because the bulk of his product is \$10.75. Now, this list of the A.M.C. that is being continually referred to, certain houses which Mr. Albert has called to my attention in the \$12.75 list are really \$10.75 manufacturers—at least, I consider them \$10.75 manufacturers.

Q. Yes. A. At the time the A.M.C. made that list those manufacturers perhaps had a dress or two dresses or five dresses on their line at \$12.75, but I included them on my \$10.75 list because that was the bulk of their business.

Examiner Bennett: Yes, I see.

The Witness: There are manufacturers in that list who also make other—who are making \$10.75 dresses in the spring season, for example, who did not make them when I made my list.

By Examiner Bennett.

7452

Q. Yes. In other words, you made a list and classified it in the light of your own requirements as resources? A. My experience with those resources.

Q. Yes. Your experience and your requirements. A. Yes, sir.

Q. And it does not necessarily coincide with the A.M.C. list? A. No, sir; because—

Q. Does the A.M.C. list throw any light or enlarge the scope of your resources? A. That is—

David S. Touff—For Commission—Cross.

7453

Q. In those particular lines, except to the extent that you have indicated now? A. Yes.

Q. That there might be a few dresses? A. Yes, it does change it to the extent that the A.M.C. list to which Mr. Albert referred is a list that was prepared on April 4. I don't know whether you are familiar with it or not, but the mortality in the dress business is notorious.

Q. I see. A. That list is out of date.

Q. I see. I see.

Examiner Bennett: All right. That explains the situation, I think, so far as I am concerned.

By Mr. Albert.

7454

Q. Do you know whether or not the A.M.C. has gotten up a subsequent list, Mr. Touff? A. Yes.

Q. They have gotten one up later than this one? A. Yes.

Q. Have you a copy of it? A. No.

Q. Have you it in your records in the J. L. Hudson store? A. I don't think so.

Q. You merely have heard of the fact that they have gotten one up; is that what you mean? A. No, no. I have seen one.

Q. You have seen one? A. Yes.

Q. Did you use that list? Did you consult that list at all? A. I use the Fairchild Directory. I had to have a standard.

7455

Q. And that is the standard you chose? A. Yes, that's right.

Q. Now, as a matter of fact, Mr. Touff, in the A.M.C. list, being Commission's Exhibit 450, is not each house there listed classified in each department in that list for each price line? Let me put it this way: The A.M.C. list— A. Yes.

Q. —does not classify houses as you have according to their most popular price lines, does it? A. May I see it?

7456

*David S. Touff—For Commission—Cross.***Mr. Martin:** There it is right there.**Mr. Albert:** Disappeared again.**Examiner Bennett:** Here it is.

A. (Continuing) Yes. Practically every house that you have called to my attention as not being on my list at \$12.75, that I have explained as on our list at \$10.75, is also on this list at \$10.75.

By Mr. Albert.

7457

Q. What I mean is this, Mr. Touff: If a house manufactures \$10.75 dresses, \$12.75 dresses, \$14.75 dresses and \$16.75 dresses, then that house is on that list under each one of those price lines; is that not so? **A.** On this list, yes.

Q. So that if a name appears on the A.M.C. list which does not appear on your choice of names which you have taken from the Fairchild Directory, then you have not included any name from the A.M.C. list regardless of its price line?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will sustain an objection. I think the witness has made clear what he has done. You can find out from him by asking him directly as to whether those A.M.C. list make his supply adequate—the resources.

7458

By Mr. Albert,

Q. Now, Mr. Touff, can you make an estimate of the number of names that appear in the Fairchild Directory from which you chose the manufacturers set forth in Commission's Exhibit 523? **A.** No.

Q. Would you say that there are approximately 1800 names listed in that directory? **A.** You might say so, but I would not.

David S. Touff—For Commission—Cross—Redirect.

7459

Q. Would you say that there was less than a thousand?

A. I wouldn't say anything about it; I couldn't.

Q. Have you any idea on it? A. No.

Q. Assuming that there are approximately 1500 names set forth in that directory, do we understand you correctly to say that of that number, without binding you that there are 1500, that whatever that number is, only 167 are available to you as resources, the 167 being the number of houses that are set forth in Commission's Exhibit 523?

Mr. Haycraft: That is objected to, Mr. Examiner.

Examiner Bennett: I will overrule the objection.

He may answer.

7460

By Mr. Albert.

Q. That is, in your opinion; that is all I want to know.

A. Now, let us see. 167 are on the one list; is that right?

Q. That is right. I am referring to Commission's Exhibit 523. A. That of the 1500, or approximately, that there are in this book, only 167 of them make a price merchandise that I classified?

Q. Right. A. To the best of my knowledge, yes.

Mr. Albert: That is all I wanted to know.

Examiner Bennett: Let us see that book, please.

(Counsel hands Commission's Exhibit 523 to the Examiner.)

Mr. Haycraft: That is in the price lines in that exhibit.

7461

The Witness: Yes.

Mr. Albert: Your witness, Mr. Haycraft.

Direct examination by Mr. Haycraft.

Q. You made a statement on cross-examination, Mr. Touff, as to who contributed novelty ideas to adaptations of style trends, and you were asked whether the members

7462

David S. Touff.—For Commission—Redirect.

of the Guild did more than the non-Guild members, and you said that they both did. Was that correct? A. Yes.

Q. What is your explanation of your answer?

Mr. Albert: That is objected to, if it please the Court, as improper redirect, calling for the conclusion of the witness. All that we are interested in is the fact—all I asked him about was the fact, and not an explanation of what he meant by it.

Mr. Haycraft: You asked for an opinion. I am asking for the explanation of the opinion. Perfectly proper.

7463

Examiner Bennett: What is the pending question?

(Question read.)

Examiner Bennett: All right. You may answer. Overruled.

Mr. Albert: Exception.

A. Well, I believe that both Guild and non-Guild members take any particular fashion or any particular style, give it their own interpretation by changing it somewhat, by changing the ornaments, changing the decoration very slightly, making it their own dress. I don't think that there is any greater tendency among the Guild houses to do this than there are among the non-Guild houses to do the same thing.

7464

By Mr. Haycraft.

Q. You were asked about whether Miss Kirby was a designer for the Fried Company in 1935. I will ask you whether or not the fact that Miss Kirby was employed as a designer by the Fried Company had anything to do with your increasing any of your business with that company in the beginning of the year 1936?

David S. Touff—For Commission—Redirect.

7465

Mr. Albert: If it will help the witness, I will object to the question as improper redirect, your Honor.

Examiner Bennett: I will overrule the objection.

A. Well—

Mr. Haycraft: I do not think the witness needs any assistance.

A. (Continuing) Well, it did indirectly. It was not her ability as a designer that interested us as much as it was the use of the name.

7466

By Mr. Haycraft:

Q. Now, with respect to Commission's Exhibit 523, which has been the subject of cross-examination, you were asked a number of questions with respect to houses that were not listed in the \$12.75 list on that exhibit. A. Yes, sir.

Q. For instance, Berke-Vogel. Why did you not include Berke-Vogel in that list? A. Because Berke-Vogel is out of business.

Q. Why did you not include Harry Butler? A. Because Harry Butler was making sport dresses in the spring season and is at best a blouse house, a shirt house, to the best of my knowledge is not making dresses this fall. At least, dress department dresses. He may be making a new sport department dresses.

7467

Q. Milton Schlussel?

Mr. Albert: Milton Kohn Schlussel.

A. Milton Schlussel was on my \$10.75 list.

Q. McKenzie-Fine? A. I didn't include them because they are out of business.

7468

David S. Touff—For Commission—Redirect.

Q. Rothbart? A. I left Rothbart off by accident. I was a mistake.

Q. Alex White? A. Alexander White is a sportswear house.

Q. Now, the other dresses to which your attention was called are included in the \$10.75—your \$10.75 list. I will call them to you if you will refer to it. A. Yes, sir.

Q. \$10.75 list. Berke, Press & Berke? A. That was included.

Q. Bowden & Toumen? A. They are included.

Q. Konette? A. Konette was included.

Q. New York Dress? A. Was included.

7469

Q. Mattie Lucille? A. Included.

Q. Pickwick? A. Pickwick.

Q. Rebrandt? A. Was included.

Mr. Albert: Do you want the list of those that were not included, Mr. Haycraft?

The Witness: I think I have it right here.

By Mr. Haycraft.

Q. Well, all the rest of the names were mentioned. Were they included in your \$10.75 list with the rest of them that counsel mentioned listed in your \$10.75 list? How about Eugene Party Frocks? A. Out of business.

Q. Fashion? A. They make women's evening dresses which I don't buy.

7470

Q. George Jacobson? A. George Jacobson makes wedding dresses. I don't buy them.

Q. Novel Dress Company? A. Novel Dress Company is a wedding dress resource. I didn't list them.

Q. Rosette Gowns? A. Rosette Gowns? I think that is R-o-s-e-t-t-e.

Mr. Albert: Yes.

The Witness: Is a junior house, a junior affiliate.

Mr. Haycraft: That is all.

Recross-examination by Mr. Albert.

Q. Mr. Touff, when you say that one of the houses mentioned makes a wedding dress, do you mean that they make a wedding dress exclusively? A. That exhibit is headed "Daytime Dresses."

Q. Yes. But it doesn't appear anywhere on your list, does it? A. I made no list of evening dresses because Department 339 is apparently not in question and I don't buy for that department. There are no wedding dresses or no evening houses on that list at all, on the \$10.75 list, Mr. Post.

Mr. Post: Oh.

7472.

Q. That particular house isn't listed anywhere, including under "Misses' Evening" or "Women's Evening," is it? A. No.

Q. So that when you say it is not listed under "\$10.75"—A. If that house were to be listed, Mr. Albert, it would have to be listed under \$10.75 on this list, in the \$10.75 classification, and this is a daytime classification.

Q. In other words, it is merely your judgment that these houses do not make a sufficient number of \$12.75 evening dresses and that you have included them solely in the \$10.75; is that it? A. I haven't included the house at all.

Q. Mr. Touff, do not the houses which you have defined as sport houses also make a tailored dress for the afternoon? A. I would say the most departments of our type, of Department 369, are unsuccessful with retailing the kind of a dress that those manufacturers make because it is too simple, too set, and those things are much better or much more profitably retailed in a sports shop.

7473

Q. Now, you say you left Rothbart off your list by mistake? A. Yes, sir.

7474

David S. Touff—For Commission—Recross.

Q. Is it possible that you have been in error with respect to omitting other names? A. I don't—I have done my best to be conscientious, to present a real picture.

Q. Well, is it fair for me to ask you and for you to answer that since you have admitted that you have made a mistake in omitting one name, do you recognize the possibility that you have perhaps omitted other names despite the fact that you have made a conscientious effort that— A. I will admit that if you will admit that I have got a pretty high batting percentage.

Q. That remains to be seen, Mr. Touff, after we present our lists.

7475

Examiner Bennett: Overruled.

A. To render the declaration profitable.

By Mr. Haycraft.

Q. Why did you sign up again? A. To be able to borrow from the Guild resources.

7476

Mr. Haycraft: That is all. I ask for an adjournment to 10 o'clock to-morrow morning, as the witness referred to by this witness as being familiar with the details of the dress business, and particularly with respect to the cause of the red card and the situation at that time and the names of the resources of the dress department is in New York to-day and will not be back until to-morrow morning.

At the time I put Mr. Kern on I had been led to believe that he could testify as to those things but apparently did not because he was not familiar with the details sufficiently to do so; that he was willing to have Miss Patterson here to-morrow morning at 10 o'clock, and I should like to have the adjournment until that time.

*David S. Touff—For Commission—Recross.
Proceedings.*

7477

Examiner Bennett: Well, under the circumstances I am going to deny the motion and we will adjourn to resume in room 1123 in Chicago at 10 A. M. on Monday.

Mr. Albert: 1123. What building is that?

Examiner Bennett: 1123 New Post Office Building.

Mr. Albert: Thank you.

Examiner Bennett: And I do it because I think that the prospects are that the Commission will get no useful testimony out of these witnesses.

(Whereupon, at 3.15 o'clock P. M., August 21, 1936, the hearing in the above entitled matter was adjourned.) 7478

Room 1123, New Post Office Building,
433 West Van Buren Street,
Chicago, Illinois,

August 24, 1936.

(Met, pursuant to notice, 9 o'clock A. M., C. S. T.)

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

M. A. ALBERT, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER, Esq., appearing for the Fashion Originators Guild of America, Inc. 7479

WILSON & McILVAINE, by J. H. S. LEE, JR., Esq. (120 West Adams Street, Chicago, Illinois), appearing for Marshall Field & Company.

BEN. J. ALTHEIMER, Esq., and ALAN J. ALTHEIMER, Esq. (10 South LaSalle Street, Chicago, Illinois), appearing for Henry W. Wyzanski, witness.

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*Proceedings.**Henry N. Wyzanski—For Commission—Direct.***PROCEEDINGS.**

Examiner Bennett: Be in order, please.

This is a reconvening of hearing from Detroit, Michigan, on Friday, August 21, 1936.

Mr. Haycraft: Has the witness been sworn?

HENRY N. WYZANSKI was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

7481

*Direct examination by Mr. Haycraft.*Q. Will you give your full name to the Court, please?
A. Henry N. Wyzanski.Mr. Feldman: It sounds like a Boston name.
The Witness: It is Boston.*By Mr. Haycraft.*

Q. Where do you live, Mr. Wyzanski? A. 3500 Lake Shore Drive, Chicago.

Q. What is your occupation? A. Merchant.

Q. Where are you employed? A. Mandel Brothers, State Street, Chicago.

7482

Mr. Albert: May it please the Court, at this time I respectfully request that all prospective witnesses be excluded from the hearing room.

Mr. Haycraft: I do not have any that I know of. Are there any witnesses here for the Federal Trade Commission hearing?

Examiner Bennett: I think there are none. If there are any, why, I will ask any persons who

Henry N. Wyzanski—For Commission—Direct.

7483

have been called as a witness for the Federal Trade Commission to please retire to the next room.

Mr. Martin: Any witnesses in the Van Ogden case? I guess not.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. What is your occupation with Mandel Brothers? A. Merchandise manager of the upstairs ready-to-wear, millinery, furs, silks and synthetic fabrics, and the basement store.

Q. How long have you had that position? A. Why, I have been merchandise manager of the basement since February 1, 1929, and assumed the upstairs functions early in September, 1934.

7484

Q. What are your duties in the position that you hold? A. I consider my duties to be the increasing of the sales and the profits.

Mr. Albert: May it please the Court, may we have the question answered, not what he considers his duties, but what his duties are?

Mr. Haycraft: Well, I think that is good enough. A man considers his duties—his interpretation of them, that is what I want.

Examiner Bennett: All right. Go ahead.

The Witness: I consider my duties to be the increasing of the sales and the profits of the things under my supervision, by the formulating of a policy consistent with the store policy, and getting together the best possible organization for the carrying out of that policy and aiding that organization by any help that I can give them in the carrying out of that policy.

7485

486

*Henry N. Wyzanski—For Commission—Direct.**By Mr. Haycraft.*

Q. Are the buyers of the merchandise in those departments under your supervision? A. They are.

Q. The sales force as well? A. No, the sales force is under the service end of the business.

Q. But the buyers are under you? A. Yes.

Q. Do you have separate, or distinct departments under your supervision in the dress departments and in the basement? A. Yes, I do.

Q. How are the departments arranged over which you have charge—take the upstairs store, for instance? A. Do you mean by number?

7487 Q. By number, if they are numbered, and by name if they have a name, also. A. Department 5 is "Misses' Better Dresses, \$25 and up."

Mr. Albert: Is that retail or wholesale?

The Witness: Retail, except in the summer, when they go down to \$15 in cotton dresses. The same applies to Department 38, which is "Women's Better Dresser." Department 81 is "Misses' Dresses, \$15 to \$29." Department—

By Mr. Haycraft.

Q. Is this wholesale or retail? A. Retail.

7488 Q. All right. A. Department 84 is "Misses' Dresses, carrying the same prices. Both those departments go down to \$12.95 in the summer season. We have Department 35, which is \$8.95 to \$12.95 dresses, which goes down to \$5.95 in the summer season, and up, occasionally has gone down to \$3.95 in cotton dresses, in the summer season.

Mr. Albert: What is that department?

The Witness: Dresses.

Mr. Albert: Will you be good enough to find out, Mr. Haycraft, what that is—women's?

Henry N. Wyzanski—For Commission—Direct.

7489

By Mr. Haycraft.

Q. Women's dresses?

Mr. Albert (continuing): —junior, misses'—

The Witness: Women's—I mean, women's and misses' dresses. We have Department 78, which is the junior department, carrying regular dresses from, \$8.95 up to \$39, and in the summer goes to \$7.95 on silk or acetate dresses, and \$3.95 on cotton dresses. We have the sports department, Department 49, which carries dresses from \$5.95 up to—upon occasion—\$59. In the summer, it goes as low at \$2.95 on cotton dresses. In the basement store, we have Department 103, which carries misses' dresses up to \$12.95, and Department 115, which carries women's dresses equally as high.

7490

Mr. Albert: Is 115 also in the basement?

The Witness: Yes.

By Mr. Haycraft.

Q. Do you know where the dresses are bought that are sold in those departments under your supervision? A. Why, I know our leading resources, I wouldn't say that I know every one of them.

Examiner Bennett: Do you mean in what cities?

By Mr. Haycraft:

7491

Q. Do you know where they are located, the leading resources? A. Yes, I know where they are located.

Q. Where are they located? A. In New York, Boston, Cleveland, Chicago, St. Louis, Philadelphia, Los Angeles.

Q. Now, out of these various markets that you have described, which one, would you say, was the principal market? A. New York.

7492

Henry N. Wyzanski—For Commission—Direct.

Q. Why is that true? A. I would say because the largest number of manufacturers whose goods sell readily in our store, are located in New York.

By Mr. Haycraft.

Q. To what class of trade does your store cater? A. Medium to better.

Mr. Albert: Medium to what?

The Witness: Medium to better, in the upstairs store and volume trade in the basement.

7493

By Mr. Haycraft.

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. As it affects our store.

Q. When did you first learn of the existence of that organization? A. I would say some time in the spring of 1933.

Q. How did it come to your attention? A. There were various discussions in our store as to whether or not we should co-operate with this guild in the way they wanted us to.

Q. And with whom were those discussions had? A. I believe with our management and—

Q. Do you recall the names of the individuals that were in on the discussion? A. Leon Mandel and Mr. Post.

7494

Q. Mr. Albert M. Post? A. Yes.

Q. Was Mr. Post with the store at Mandels in 1929 when you assumed the duties in the basement store? A. I don't believe so, I think it was 1930, I am not positive.

Q. How long did he continue with Mandel Brothers? A. I believe it was four years.

Q. What was his position there? A. Merchandise manager of the upstairs ready-to-wear and intimate apparel.

Q. You succeeded him? A. I did.

Henry N. Wyzanski—For Commission—Direct.

7495

Q. What was the outcome of these discussions that you referred to? A. The outcome was that we should sign the declaration of co-operation with the Guild with a rider attached to it, to the effect—

Mr. Albert: Now, if it please the Court, I object to any description of any written document that is not in evidence.

By Mr. Haycraft.

Q. Do you have a copy of this declaration of co-operation, or the rider that you refer to? A. Our attorney has.

Mr. Haycraft: Will you produce it, please?

(Mr. Altheimer hands paper to Mr. Haycraft.)

7496

Mr. Haycraft (indicating): I show you Commission's Exhibits 527-A and B, and ask you if you can identify those two sheets of paper?

(The papers referred to were marked Commission's Exhibits 527-A and B for Identification.)

The Witness: I don't follow what you mean by "identify."

By Mr. Haycraft.

Q. Can you identify it? Do you know what it is? A. I know what they are, yes.

Q. All right, what are they? A. 527-A is a declaration of co-operation in anti-piracy between Mandel Brothers and the Fashion Originators Guild and—

7497

Q. Is it dated? A. No.

Q. All right. A. And 527-B is a letter, copy of a letter of June 23, 1933, to the Fashion Originators Guild signed by Mandel Brothers.

Q. Who signed the original of that letter? A. Mr. Post.

Q. Albert M. Post? A. Yes.

7498

Henry N. Wyzanski—For Commission—Direct.

Mr. Haycraft: I offer the exhibits which have just been identified.

(The papers referred to, heretofore marked for Identification Commission's Exhibits 527-A and B, were received in evidence.)

By Mr. Haycraft.

Q. What is the date of the letter you just identified?

A. June 23rd, I believe.

Q. 1933? A. Yes.

Mr. Albert: No objection.

7499

Examiner Bennett: Received.

By Mr. Haycraft.

Q. I call your attention to paragraph two of Commission's Exhibit No. 527-B, which says that "In signing this we are calling attention to the two reservations which were discussed at our meeting, and wish to stipulate that this declaration is approved with these reservations." What meeting did that refer to? Do you know where this conference was held, that is referred to in this letter?

Mr. Albert: I object to the question as immaterial.

The Witness: No, I don't.

7500

Examiner Bennett: Do you want to ask him about anything that is in that letter, that is in practice, afterwards, as to whether it was used, and he knows? It is all right.

By Mr. Haycraft.

Q. Now, in the first of these reservations, one, that it applied only to the upstairs store, I will ask you whether or not you were present when a discussion was had with respect to that reservation?

Henry N. Wyzanski—For Commission—Direct.

7501

Mr. Albert: That is objected to, if it please the Court, the witness has already testified he was not there.

Mr. Haycraft: No, he hasn't anything of the kind.

Examiner Bennett: He may answer.

The Witness: I was present at the meetings in our store when it was discussed.

By Mr. Haycraft.

Q. Yes. All right. Why was that reservation made?

Mr. Albert: That is objected to, if it please the Court, the exhibit speaks for itself.

7502

Examiner Bennett: Overruled.

Mr. Albert: Exception.

The Witness: Why was that reservation—question please.

(Last question read by the reporter.)

The Witness: Because it was contrary to the policy of our basement store not to have copies. The principle of our basement store is "Fashion at a price." It is a slogan which we have long had, and we feel that a buying motive of style merchandise in our establishment is one known as economical emulation. Mrs. Jones wants what Mrs. Astor has, and she cannot afford to pay the price that Mrs. Astor pays; therefore, she wants the closest approximation of it at the price she can afford to pay, and such a declaration of co-operation with the Guild would be inconsistent with the policy of our basement store, which has long been established.

7503

Q. Now, the second reservation: "If any manufacturer refuses to accept the return of any merchandise sent to him for violation of the Warranty Clause, we reserve the

7504

Henry N. Wyzanski—For Commission—Direct.

right of decision regarding its final disposal. If it is necessary for us to reaccept this goods and sell it, such sale shall not be termed a violation of this declaration. I will ask you whether or not the subject-matter of that reservation was discussed at meetings in the Mandel store, which you attended? A. I was not present at those meetings.

Q. You were not present at those meetings? A. I don't recall being there.

Q. In other words, meetings which you were present at involved the basement store policy? A. Yes.

Q. Over which you had jurisdiction at that time, is that correct? A. That is correct.

7505

Q. Now, in the declaration of co-operation itself, Commission's Exhibit No. 527-A, reference is made to a certain clause which for the want of a better name we can refer to as the warranty clause; are you familiar with that? A. Yes, I am.

Q. (Indicating) I show you Commission's Exhibit No. 498-A, and ask you if you can identify in any way the stamp on that, the warranty stamp on that exhibit? A. Yes, I can identify it.

Q. Is that the stamp—is that the language of the stamp used by your store on orders? A. Yes.

Q. Now, what was the custom, in what way, rather, did Mandel Brothers comply with the declaration of co-operation as to the placing of such warranty stamp on orders?

7506

A. That is, placed them on orders when we had bought merchandise from manufacturers.

Q. Now, beginning with June, 1933, after June 23rd, 1933, on what orders was such stamp placed? A. On dress orders.

Q. With what class of manufacturers? Well, did you place it on all orders, for instance, did you place it on basement store orders at that time? A. We did not place it on basement store orders at that time, no.

Q. All right. That was covered by the reservation. Did there ever come a time—

Mr. Albert: If it please the Court, I ask that Mr. Haycraft's last statement that that was covered by the reservation, be stricken out. I think it is about time that Mr. Haycraft ceases to testify.

Examiner Bennett: It may be stricken.

By Mr. Haycraft.

Q. Well, I will ask the witness—what was the reason for not placing it on orders placed for the basement store?

A. Because, according to the rider of our original—articles of co-operation—we did not have to put it on basement orders.

Q. Did a time ever come when you had to put it on basement orders? A. Yes, we did.

Q. When did that time come? A. It was in the early fall of 1935.

Q. What was the occasion? A. The Guild declared that in keeping with our declaration of co-operation we would have to put it on all orders, despite the fact that we had this rider making it apply only to the upstairs store.

Q. Was that declaration or requirement in writing, or orally? A. In a bulletin from the Guild.

Q. Do you have that bulletin with you? A. I believe we do.

Mr. Altheimer: What date, do you know?

Mr. Haycraft: What date?

The Witness: I think we had one around November, saying that it should be on all orders.

(Thereupon Mr. Altheimer hands a paper to Mr. Haycraft.)

(Thereupon a paper was marked Commission's Exhibit 528-A and B, for Identification.)

7510

Henry N. Wyzanski—For Commission—Direct.

(Mr. Albert picks up the exhibit just marked Commission's Exhibit 528-A and B.)

Mr. Haycraft: It has not been identified yet.

Mr. Post: It is already in evidence, is it?

Mr. Albert: Sure.

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 528-A and B, and ask you if you can identify them?

Examiner Bennett: What is it?

7511

The Witness: It is a bulletin from the Fashion Originators Guild of America stating that among other things that—

Mr. Albert: No.

By Mr. Haycraft.

Q. Do not describe it, just give us the date. A. November 6, 1935, addressed to Mandel Brothers.

Q. Signed by? A. Signed by Fashion Originators Guild, Albert M. Post.

Q. Albert M. Post was then director? A. Executive director.

Q. That is the same Albert M. Post who was at one time merchandise manager of Mandel Brothers? A. Yes.

7512

Q. And the same man that made the reservations in Commission's Exhibits 527-A and B? A. That is right.

Mr. Feldman: 1933?

By Mr. Haycraft.

Q. Well, did you discuss this matter with Mr. Post, this putting of the warranty stamp on all orders including the basement store? A. I don't recall any such discussion.

Q. Well, since November 6th, 1935, have you been placing the stamp on all basement orders? A. Yes, we have.

Henry N. Wyzanski—For Commission—Direct.

7513

Q. Mr. Wyzanski, can you testify as to the percentage of merchandise, source of merchandise resources for your upstairs store, that consists of members of the Guild, Guild manufacturers? A. I cannot testify as to the percentage of manufacturers. I can testify as to the percentage of goods that we used in 1935 in the Guild price lines and the percentage that came from Guild resources?

Q. What percentage is that?

Mr. Albert: If it please the Court, that is objected to, unless we know upon what figures the witness bases his estimate. I do not think the Court is interested in knowing or hearing what the witness thinks he can tell us about it.

7514

Mr. Martin: He did not say that.

Mr. Haycraft: I have qualified that.

Mr. Albert: What study he has made of it, if it please the Court—we are now even omitting the very varied proposition that Mr. Haycraft has of asking the witness "Have you made a study" and when he says "yes" that he has made a study, we get the answer without knowing what he has studied, at least let Mr. Haycraft ask him whether he has made a study of it.

Examiner Bennett: I will let him answer.

Mr. Albert: Exception.

Mr. Bennett: Give us your best knowledge.

The Witness: What is it?

7515

By Mr. Haycraft.

Q. Go ahead.

Examiner Bennett: Give us your best knowledge. Read the question.

(Last question read by the reporter.)

The Witness: .61.4 per cent. of the merchandise we used in 1935 in Guild price lines, came from houses—members of the Guild.

7516

*Henry N. Wyzanski—For Commission—Direct.**By Mr. Haycraft.*

Q. What did you include in the Guild prices—what price range? A. \$10.75 and up.

Q. Cost? A. Cost.

Q. You did not include the lower price lines as mentioned in Commission's Exhibit No. 528-A? A. No, because many of them are not members of the Guild this year.

7517

Q. I see. Now, had there been a discussion, or correspondence, between you and the Guild with respect to the inclusion of the lower-priced manufacturers and the return of goods by the basement stores prior to November 1, 1935? A. I wrote Mr. Post a letter. I believe it was—it was in the fall or September, 1935, I think it was in September, telling him that it would be a hardship on our basement store, and asking him for his best advice.

Q. How long then had it been that they had been asking you to co-operate to that extent? A. Beginning with the fall season of 1935. I place it some time in July or August, 1935.

Q. What was that requirement at that time? A. That we place—

Mr. Albert: If it please the Court, that is objected to unless we have the correspondence to which the witness is referring.

7518

By Mr. Haycraft.

Q. Do you have some of that correspondence? A. I have a letter to Mr. Post.

Mr. Altheimer: To or from?

The Witness: To Mr. Post.

(Thereupon paper was marked for Identification Commission's Exhibit 529.)

Henry N. Wyzanski—For Commission—Direct.

7519

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 529, and ask you if that is the letter you have in mind?

A. That is the letter I have in mind.

Mr. Haycraft: I offer in evidence Commission's Exhibit No. 529.

By Mr. Haycraft.

Q. The original of that letter was sent to Mr. Post, was it? A. That is correct.

Q. Who at that time was representing the Guild, was he? A. That is right.

Q. That is, he was executive director of the Guild? A. Yes.

7520

Mr. Albert: No objection.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for Identification Commission's Exhibit 529, was received in evidence.)

By Mr. Haycraft.

Q. Did you get any reply to that letter? A. I did.

Q. Do you have that here also this morning? A. I do.

(Witness produces paper.)

(The paper referred to was marked Commission's Exhibit 530 for Identification.)

7521

Mr. Albert: No objection, if it please the Court, except for the pencil notations and underlined parts in pencil that appear on the letter, which did not originally appear on it.

Examiner Bennett: Yes, they may be eliminated. It is received with the understanding that nota-

7522

Henry N. Wyzanski—For Commission—Direct.

tions made thereon and markings may be eliminated.

Mr. Haycraft: Yes, it is perfectly all right with us.

(The paper referred to, heretofore marked for Identification Commission's Exhibit 530-A to E, inclusive, was received in evidence. Being a letter of September 18, 1935, to Henry Wyzanski on the letterhead of the Fashion Originators Guild, signed by Albert M. Post.)

By Mr. Haycraft.

7523

Q. Now, Mr. Wyzanski, I believe you started to say that you had discussions on this matter as early as July and August, 1935, is that correct? A. No, I did not say discussions.

Q. What was it, correspondence or—was there any more correspondence on this besides what you have stated? A. No.

7524

Q. It says in this first paragraph of Commission's Exhibit No. 529 from you to Mr. Post: "You will remember that when we spoke about not having copies of Guild Dresses in our Subway, you said that we would have an understanding that you would be most lenient with basement stores because, as you yourself said, they must meet competition." Now, what did you refer to there when you said "When we spoke about not having copies of Guild dresses" when you quoted Mr. Post? A. It must have been a discussion that we had on the subject; I do not recall what it was.

Q. But do you recall the discussion at all? A. No, I can't say that I do.

Q. Now, the next paragraph you refer to the style of 515 from Solo. Who is Solo? A. Basement resource.

Q. And that is not a member of the Guild? A. No.

Henry N. Wyzanski—For Commission—Direct.

7525

Q. Do you recall what cost price that dress was? A. No, I don't.

Q. Now, I notice you name Carters, Gaylords, Pages, Graysons, who were they? A. Chain shops in Chicago.

Q. When you say you returned style 799 through D. R. A. Who was D. R. A.? A. Basement Dress Resource.

Q. Not a member of the Guild? A. No.

Q. What does the D. R. A. stand for? A. That I don't know; it is the name of a firm.

Mr. Post: Probably Daughters of the American Revolution.

The Witness: Daughters of the American Revolution, probably, Mr. Post says. 7526

By Mr. Haycraft.

Q. Then you refer to style 943 from Varsity; is that also a non-member? Of the Guild? A. Yes.

Q. When you used the language "best selling dresses" what did you have in mind there? A. Best selling dresses, that would be dresses in—dresses selling fast.

Q. Do you recollect as to how fast these dresses were selling? A. I don't have any recollection now, no.

Q. When you say "we have hurt the Subway's business" in what way did it hurt the Subway's business?

Mr. Albert: I object to the question, if your Honor please, no proper foundation has been laid as to any study, or analysis, or comparison of figures this man has made to enable him to reach a conclusion as is asked for. 7527

Mr. Haycraft: I do not think it is necessary.

Mr. Albert: Oh, yes.

Examiner Bennett: Overruled; received.

Mr. Albert: Exception.

The Witness: What was the question, please?

7528

Henry N. Wyzanski—For Commission—Direct.

(Last question read.)

The Witness: By returning dresses that were selling fast, instead of being able to keep them in stock and selling them, we were missing potential sales, and furthermore, by not being able to re-order them we were losing further sales.

By Mr. Haycraft.

Q. Now, the first paragraph of Mr. Post's reply, Commission's Exhibit No. 530-A to E, mentioning a man by the name of Johnny Groff—who is he? A. Head of our New York office.

7529

Q. You have an office in New York, do you? A. Yes, we do.

Q. Mention is also made of Weintraub—who is he? A. At that time he was divisional merchandise manager of the basement store, under me.

Q. In the third paragraph, I find this language: "Our position is that we will consider any request for exception of a specific model, but only with substantiating evidence of any claims. In such cases we expect the store to co-operate by removing the garments immediately from sale pending an investigation as to the existence of the same dresses in unsigned stores." I will ask you whether or not that policy was thereafter followed by your store in co-operation with the Guild? A. Yes, we followed that policy.

7530

Q. What was the basis for an exception of a specific model?

Mr. Albert: That is objected to, if it please the Court; the letter speaks for itself.

Mr. Haycraft: I am asking him not for the letter, but what the basis was that the store actually followed, Mr. Examiner.

Examiner Bennett: Yes, followed in practice?

Mr. Haycraft: In practice.

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7531

Examiner Bennett: All right. Be more specific than the letter. Objection overruled.

The Witness: I don't recall any exceptions.

Mr. Albert: I am sorry, I did not hear the answer.

The Witness: I don't recall any exceptions.

By Mr. Haycraft.

Q. Do you recall any attempt to get exceptions, to get a model excepted from the requirements to be returned? It says here "We will consider any request for exception of a specific model." A. Well, whenever the Guild shopper pointed out we had what she said was a copy, we would always ask her for proof.

7532

Q. And if she furnished proof, then what did you do? A. Immediately returned the dresses, we took them off sale upon her calling it to our attention, and then we returned them when we found out—when she had proved that they were copies.

Q. Well, did you make any investigation among your chain store competitors to see whether or not that model was being sold by them?

Mr. Albert: If it please the Court, that is objected to as to form, as being a leading question.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

The Witness: May I have the question?

7533

(Last question read by the reporter.)

The Witness: Yes, we did, as outlined in our letter to Mr. Post, they were on sale at chain stores.

We found that they were on sale at chain stores.

By Mr. Haycraft.

Q. When you found that they were on sale at chain stores, what was the practice? What did you do then?

7534

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A. We abided by the Guild's decision, and took them off sale. That is the reason for my complaint.

Q. You returned the models to the manufacturer? A. Yes, yes, we did.

Q. Did you ever make any request for an exception, as indicated in the paragraph I read to you a while ago?

Mr. Albert: That is objected, if it please the Court. The witness has previously testified he never did. That is why we have had seven or eight questions that have followed that answer in an attempt by Mr. Haycraft to lead the witness.

Examiner Bennett: Sustained.

7535

By Mr. Haycraft.

Q. Who was the shopper in the Chicago area? A. Miss Kindler.

Q. On page four of this letter from Mr. Post, there is a mention made of Miss Popel, who is she? A. She was the dress buyer for those basement departments at that time.

Q. In the third paragraph, third completed paragraph of this letter, there appears the statement: "We will ask our representative not to continue what we call 'open shopping.'" What does that mean? What does that refer to?

Mr. Albert: If the witness knows, your Honor.

7536

By Mr. Haycraft.

Q. Well, what is your interpretation of it.

Mr. Albert: We are not interested in his interpretation, if it please the Court. We want to know what it means, not what he thinks it means.

Mr. Haycraft: I am interested in what this witness' interpretation is, he received the letter.

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7537

Examiner Bennett: Yes, he may answer.

The Witness: Continuous shopping of our department in an endeavor to find Guild copies.

By Mr. Haycraft.

Q. Was that, as a matter of fact, discontinued at that time? A. I believe it was for a short period.

Q. Do you remember how long? A. No, but I think it was around two to three weeks.

Q. After two or three weeks, did Miss Kindler continue to shop in your department? A. Oh, yes, we have had returns from the basement since then to the Guild, because of her shopping.

7538

Q. Who is the other shopper besides Miss Kindler?

Mr. Albert: If it please the Court, there is no testimony here that there is another shopper.

Mr. Haycraft: All right. I am reading from the last paragraph on page four of this letter, Commission's Exhibit No. 530. "We are now employing two shoppers in Chicago."

The Witness: I don't know.

By Mr. Haycraft.

Q. Do you know who the other shopper was? A. I don't.

Q. Do you belong to the Michigan Avenue Guild, local Guild, Mr. Wyzanski? A. We do not.

7539

Q. Have you ever been requested to subscribe funds to defray the expenses of the shoppers in Chicago, on the part of the Guild? A. We have, we have been requested.

Q. Have you complied with that? A. No, we have not.

Q. Now, Mr. Wyzanski, what has been your experience in complying with the requirements of the Guild in returning copies to non-Guild manufacturers, subsequent to September 1, 1935, the date of this letter, September 18th.

7540

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Mr. Albert: May we have that question a little more definite, your Honor? It opens up a wide field, and I would like to be able to make an objection as to what the witness is going to answer. I think Mr. Haycraft can—if he has various subdivisions of the question, can very readily ask him each one first.

Examiner Bennett: Have you in mind something specific you want to bring out?

By Mr. Haycraft.

7541 Q. Well, I will ask him first, whether or not Mandel Brothers has always returned garments which the Guild claims to be copies of styles of Guild manufacturers? A. Yes, we have always returned from our store Guild—copies of Guild dresses.

Q. Do you have an opinion as to the effect that that practice has had upon the business of your basement store, since that time? A. I have a definite opinion that it has hurt us.

7542 Q. In what way has it hurt you? A. Because it is contrary to the policy of our basement store, which is to give fashion at a price, and we are not keeping faith with our customers in doing that, to the fullest extent, because we are not able to give them the closest approximation to what they want at the price they want to pay; therefore, I feel we have hurt our business. In addition, there has been certain best selling numbers which we have been forced to discontinue selling and have not been able to re-order. That is evidence of that.

Q. Has that had an effect upon your ability to compete with retail stores that are not co-operating with the Guild?

Mr. Albert: That is objected to, if it please the Court, absolutely no foundation laid for that question, as to what his competitors are doing, and what his ability is to compete.

Examiner Bennett: Well, I will let him answer.

Mr. Albert: Exception.

The Witness: We believe that if chain stores have copies of Guild dresses, as we know they have had from our various shoppers, and we don't have them, that we will not get the fullest amount of business because we are not carrying out our policy of giving fashion at a price.

Q. Do you have in mind any particular instance where this has been proved, since, say, September 1, 1935? A. In the basement store, none other than those quoted in that letter, but we have had many returns to the Guild, so I assume that is a common practice.

7544

Q. Well, has it affected at all any of your price lines in your other stores—other departments? A. Yes, I believe that in our lower-priced departments upstairs we have been hurt by not having Guild copies.

6

Q. Do you have any illustrations of that? A. We have one that I can remember, late this spring.

Q. What was that? A. We had a large order with a manufacturer for 2500 dresses, placed to meet the business we had with that manufacturer last year, when we sold some 6,000 of his dresses in June, and at the time the dresses started to arrive in the store Miss Kindler called to our attention the fact that one was a Guild copy. So we had to return that dress, which we did, and canceled all others of that particular style that were on order. In canceling that style, as well as returning those which we had received, it broke up our assortment, because this was a one-piece style, and in order to keep our assortment balanced from a customer viewpoint we had to cut down—we felt we had to cut down some of the dresses that were on order in two-piece styles, to keep the assortment in balance. In so doing, we canceled a great many dresses, and, as a result, did not secure the business until such time

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as we obtained permission from the Guild to carry the dresses. That was an exception in the upstairs store, that we secured.

Q. Then you did secure an exception in the upstairs store? A. Yes, we did.

Q. Although you never have in the basement, is that correct? A. No, I don't recall any in the basement.

Q. Now, after this instance you have just now referred to, where you had to—do you know how many actual dresses were returned, or how many dresses were canceled pursuant to that?

7547

Mr. Albert: I am sorry, I did not understand the question. May I have it read?

(Last question read by the reporter.)

Mr. Haycraft: Pursuant to the instructions from the Guild.

The Witness: Originally, 1100 dresses out of the 2500 ordered.

By Mr. Haycraft.

Q. With whom did you take up the matter in trying to get an exception on that return? A. That was taken up by the New York office. I took it up first with our New York office, who took it up with Mr. Post, and they were unsuccessful in securing an exception, and I sent Mr. Post a wire.

7548

Q. Do you have that telegram here present in the court room? A. I believe we have.

Q. Telegram to Mr. Post. What date was that? A. I think it was June 11th, 12th, or around there.

(Whereupon a telegram was marked for Identification Commission's Exhibit 531-A and B.)

by Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 531-A and B, and ask you if you can identify that? A.

Yes.

Q. What is it? A. It is a wire that I sent to Mr. Post.

Q. When?

Examiner Bennett: Date?

The Witness: On June 12th, saying that—

by Mr. Haycraft.

Q. 1936?

Mr. Albert: Never mind what it says.

7550

Mr. Haycraft: All right. I offer it in evidence.

by Mr. Haycraft.

Q. Is this the telegram you have in mind in your testimony just now (indicating)? A. Yes.

Mr. Keller: What year?

Mr. Haycraft: 1936.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The telegram referred to, heretofore marked for Identification Commission's Exhibits 531-A and 531-B, was received in evidence.)

7551

by Mr. Haycraft.

Q. Now, after sending this telegram, did you get any reply to it from Mr. Post? A. I got a telephone call.

Q. How long after you sent the telegram, did he call you on the telephone? A. I believe it was the same day.

Q. What did Mr. Post tell you on that occasion? A. He told us that it had been a mistake in New York, that the Harris thing had broken, and that it was a misunder-

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Henry N. Wyzanski—For Commission—Direct.

standing with Sterns Brothers in New York, and, furthermore, he did not feel that the situation was comparable in Chicago, where we had the line exclusively, and people in various stores in New York had it and needed it in order to meet competition, and I brought out the point that we had competition with our own figures. We had sold 6,000 of the dresses last year, in that month, and we had made plans to sell many this year, and that we were not meeting our sales of last year, or our potential sales figures, and that consequently it was working hardship on us. I felt that—I told him that we were willing to co-operate with the Guild as much as anybody else was, but that we wanted the same privilege that every other Guild store had, and that we did not see why we should be singled out in Chicago and compared with Sterns and Wannamakers and Loesers and Frankl Simon, and stores like that in New York, and stores in other cities throughout the country, which were members of the Guild, but which were carrying these dresses, because the Guild shopper evidently had not detected them at those stores. And, after a long discussion which we had over the phone, upon our saying that we would make it very clear to Mr. Harris that we did not want to buy copies in the future, Mr. Post gave us the privilege of carrying these copies.

7553

Q. Harris was the manufacturer? A. Yes.

7554

Q. Well, did he allow you to place any re-orders?

Yes.

Q. He allowed you to complete this sale, at that time? A. Oh, yes.

Q. How long were these dresses off sale? A. My original wire to the New York office asking them to see Mr. Post about it was on style 809, the first style which caused the big cancellation, and that was on May 14th. And the telephone conversation with Mr. Post was, I believe, June 12th, in answer to this wire, so that 809, the style

for which we had the most on order, was off sale for more than a month. By the time we got it in again, and in addition to which we had styles 813 and 829 coming into our store for an "ad" on a Tuesday morning, which was around that period, the middle of June, and on Monday, when we were going to O.K. the "ad" on these dresses, we got a notice from the Guild, a sketch showing style 813 as a copy, so we immediately took style 813, which we had just received, off sale, and changed our "ad" from a two cut "ad," to a one cut "ad," and ran style order 809, showing that we were still co-operating completely with the Guild.

Q. Now then, when did you place that back on sale? A. Well, I think we received shipment on these dresses around the 20th of June.

7556

Q. Then did you continue to sell them, for how long a period? A. We still have them on sale, and we have sold over 6,600 of them, despite the fact that we started out selling beyond the peak of the season.

Q. Would you say those were hot numbers? A. I would say they were the hottest thing in summer dresses, and our sales passed the peak of the season, which would seem to indicate that our original plans of buying 2500 originally, so that we could more than double last year's sales, shows that our plans were correct, otherwise we would never have been able to sell that many past the peak of the season.

Q. What was the difference between those dresses and the dresses that you sold the year before, manufactured by the same manufacturer? A. They were of a different fabric, and styles were somewhat different.

7557

Q. How long have you been selling those particular numbers in your store, 809, 813? A. Well, we really did not have a chance to sell 809. It was in, I would say, not more than two days before the Guild shopper caught it, and that led to our original return and cancellation and our wire to the New York office.

7558

Henry N. Wyranski—For Commission—Direct.

Q. And the 813 has not really been put on sale? A. No.

Q. Or 809? A. No.

Q. Is that correct? A. Yes, that is correct.

Q. Did the orders which you placed with Mr. Harris for those garments contain the warranty clause? A. Yes, they did.

Q. Was any representation made to you by Harris as to whether or not they were copies?

Mr. Albert: That is objected to, if it please the Court, as immaterial.

Examiner Bennett: I will let him answer.

(Last question read by the reporter.)

7559

The Witness: I was not there at the time the styles were bought, I don't know.

Mr. Albert: If it please the Court, I do not think we have as yet had a statement as to what price these dresses were selling at. I may be mistaken about that. Did you get—

By Mr. Haycraft.

Q. What price were they? A. \$5.95 retail.

Q. What was the cost price on them? What was the cost?

Mr. Keller: Wait just a moment.

Mr. Ben J. Altheimer: I do not wish to disclose that at this hearing, if the Court pleases.

7560

Mr. Haycraft: Very well. I will withdraw that.

By Mr. Haycraft.

Q. Were they silk dresses or cotton dresses? A. They were synthetic fabrics.

Q. As I understood your testimony a moment ago, you said that 809—you referred to 809 and 813—I will ask you whether or not the style 809 was a style known

Henry N. Wyzanski—For Commission—Direct.

7561

your store prior to the time you placed your order? A. Yes, our buyers claimed that we had it the previous year.

Q. From the same manufacturer? A. Yes.

Q. Had you been successful, or otherwise, with it on the previous year? A. I don't recall.

Q. Pursuant to the policy of your store, would you have returned those dresses to the manufacturer if the Guild had not requested it?

Mr. Albert: That is objected to, if it please the Court, as immaterial.

Examiner Bennett: Sustained.

By Mr. Haycraft.

7562

Q. Your firm is still co-operating with the Bureau? A. Definitely.

Mr. Albert: That is a surprise.

By Mr. Haycraft.

Q. Has there been any change in the requirements on the part of the Guild as to placing of warranty stamp on orders?

Mr. Albert: May I have that question repeated?
(Question read by the reporter.)

The Witness: We are still placing the stamp on all our orders.

7563

By Mr. Haycraft.

Q. Including the basement? A. Including the basement.

Q. Is the shopper, Miss Kindler, still shopping your store? A. Yes.

Q. You are still returning copies to the manufacturer? A. Yes. We returned some last week.

Q. Do you keep any record of the copies that you return, as to the number of garments that you return? A. No.

7564 *Henry N. Wyzanski—For Commission—Direct—Cross.*

Q. Can you recall the name of any of the manufacturers whose garments you have returned?

Mr. Altheimer: On behalf of Mandel Brothers we wish to object to that question, on the ground we do not wish to disclose our sources, to whom we return, or from whom we purchase.

By Examiner Bennett.

Q. Is it your contention, Mr. Witness, that that would do your business an injury? A. Yes.

7565 Mr. Altheimer: We feel it would disclose so-called trade secrets, our sources of supply.

Examiner Bennett: I shall not press it.

Mr. Haycraft: I think that's all.

Examiner Bennett: We will take a recess of ten minutes.

(A short recess was thereupon taken.)

Examiner Bennett: Be in order, please. You may proceed, Mr. Albert, with the cross-examination.

Cross-examination by Mr. Albert.

7566 Q. Would you mind telling us the difference between your position and that of divisional merchandise manager, and as to whether or not the divisional merchandise manager is your superior, or your subordinate? A. The divisional merchandise manager would be my subordinate.

Q. He would be your subordinate? A. Yes.

Q. Does the divisional merchandise manager have charge of the same number of departments of which you have testified, or a lesser number? A. Our organization is set up so that I have an assistant in my upstairs functions and a divisional manager in the basement, and in that upstairs department the assistant works in the same de-

departments I do, and in the basement the divisional manager works in the same departments that I do.

Q. So that the divisional merchandise manager has charge, under your supervision of Departments 103 and 115? A. That is correct.

Q. And no control over the other departments, is that it? A. Control over all the other departments in the basement, but not of the upstairs dress departments, or any upstairs departments.

Mr. Albert: Are these the exhibits?

Examiner Bennett: Do the gentlemen mind if I ask them not to smoke during the proceeding? I cannot make an exception.

Mr. Albert: Before I proceed with the cross-examination of this witness, I would like to ask the Commission's attorneys as to whether or not they expect to call upon Mr. Post for any evidence or testimony with respect to Commission's Exhibits 527-A and 527-B, since, if the Commission does intend to call upon Mr. Post, who signed Commission's Exhibits 527-A and 527-B, I would like to curtail or even withhold my cross-examination of this witness with respect to those exhibits until Mr. Post takes the stand. He is the man who actually signed them, and had the conference with respect to that, and I do not want to waste time with this witness on it.

Mr. Haycraft: I haven't any idea of calling Mr. Post on those exhibits. They speak pretty well for themselves.

By Mr. Albert.

Q. Now, Mr. Wyzanski, what percentage of your merchandise is purchased in New York? A. Is purchased here?

7570

Henry N. Wyzanski—For Commission—Cross.

Q. In New York. A. I don't know.

Q. What percentage of your merchandise is purchased in Boston? A. I don't know.

Q. What percentage of your merchandise is purchased in Cleveland? A. I don't know.

Q. What percentage of your merchandise is purchased in Chicago? A. I don't know.

Q. What percentage of your merchandise is purchased in St. Louis? A. I don't know.

Q. What percentage of your merchandise is purchased in Philadelphia? A. I don't know.

Q. What percentage of your merchandise is purchased in Los Angeles? A. I don't know.

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Q. By how much does the percentage of your merchandise purchased in New York exceed that purchased in Boston? A. By a very great deal.

Q. Have you any idea as to the amount? A. I would say at least 100 to 1.

Q. By how much does the purchase of your merchandise in New York exceed the purchases in Cleveland? A. By a greater percentage than that.

Q. You mean by that, that for every unit purchased in Boston you purchase 100 units in New York? A. That is right.

Q. By how much does the amount of your purchases in New York exceed that purchased in Chicago? A. Oh, I would say fifteen to one.

7572

Q. And St. Louis? A. On a 100 to 1 basis.

Q. Philadelphia? A. Slightly more than Boston.

Q. And Los Angeles? A. The same as Boston.

Q. On what calculations do you base your estimates? A. My best judgment, from memory, as to where we buy most of our merchandise.

Q. When did you last see the figures? A. I have never seen any such figures by cities, but I have some figures by resources, and that would be my judgment.

Q. That is a correlation of the figures by resources, as far as you know them to be located in a particular city?

A. That is right.

Q. What would you say was the total dollar volume of your purchases in New York?

Mr. Altheimer: We object to that.

Mr. Haycraft: That is objected to.

Examiner Bennett: The witness' counsel objects to that?

Mr. Altheimer: Yes. We prefer to have that line of questioning changed. We cannot see where the dollar volume in sales, of purchases, is material to the issues in this proceeding.

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Examiner Bennett: Are you inclined to press that, Mr. Albert?

Mr. Albert: If it please the Court, there has always been a very grave question that originated in the Commission's evidence thus far as to the resources of these various concerns. We have a witness coming in here that has given us an opinion as to where these resources come from, he has given us statements of comparisons of resources, such as New York purchasing 100 dresses to 1 purchased in Boston.

Certainly, I believe, that, under the circumstances, I should be permitted to find out upon what he bases his figures.

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In addition to that, if the Court please, I believe that in the interest of saving a great deal of time, by reason of the fact that this witness should have those figures at his finger tips, the evidence should be disclosed, in order to obviate the necessity of our subpoenaing the books of Mandel Brothers, to find out how accurate these figures are, which we intend to do if we do not get at least an estimate of them from this witness.

7576

Henry N. Wyzanski—For Commission—Cross.

Examiner Bennett: That will probably be a privilege when you get around to putting in your side of the case. In view of your attitude, I think I shall sustain the objection of the attorney for the Commission, who, I believe, has objected to this as irrelevant, and I consider it irrelevant, so far as I can see.

Mr. Albert: If it please the Court, may I point out that in my opinion the attorney representing this particular witness has no right to object on the ground of immateriality or irrelevancy.

Examiner Bennett: I am talking about the attorney for the Commission. He objected.

7577

Mr. Albert: Oh, I see. Exception.

Examiner Bennett: As I remember the record, the attorney for the Commission did not place this within a specific limit.

Mr. Haycraft: No, I did not.

Examiner Bennett: He simply asked for cities.

Mr. Albert: He did ask as to what cities and what amount of merchandise was purchased.

Mr. Haycraft: I might point this out, Mr. Examiner, in view of the fact that the witness was asked, that this witness was not interrogated to the effect of red carding, which is the usual procedure where we get into this question about the effect and the effect of the red carding. This witness was interrogated only as to the fact of the demands of the Guild as they are enforced on members.

7578

Examiner Bennett: I see no relevance of this matter.

Mr. Haycraft: I object to that.

Examiner Bennett: All right. Let us go ahead.

By Mr. Albert.

Q. Now, Mr. Wyzanski, is it part of your duties to supervise the actions of the buyers, and of your subordinates, in seeing to it that they honestly and fairly conform to the policies adopted by Mandel Brothers? A. Yes, it is.

Q. And in the performance of that duty, do you check up, upon the actions of the buyers in that respect? A. As many of them as time allows.

Q. I don't quite understand what you mean by "as many of them as time allows." Are there any buyers who have a free rein to do as they wish? A. No, but they are given leave for initiative, and to do things in accordance with our policies, and, naturally, since they are working for me, I am in contact with the major ones, but there may be, and undoubtedly there are, some details with which I am not familiar. I have over sixty departments under my jurisdiction. It would be impossible to know the details in all of them.

7580

Q. Take, for example, the Guild program. Did you make any investigation as to whether or not all your buyers were placing the stamp upon their orders, as required? A. Oh, yes, I definitely did that.

Q. Did you make any investigation to determine whether or not the buyers were attempting not to purchase copies in their various departments? A. Yes, we made that investigation.

7581

Q. In all departments? A. Yes.

Q. You have testified to knowing a certain Miss Kindler. Who was she? A. A Guild shopper in town here.

Q. When did you first meet her? A. I can't recall.

Q. Have you any general recollection? I don't want any specific date. Within a month or two, or even three or four months. A. It was some time after I became associated with the upstairs ready-to-wear.

7582

Henry N. Wyzanski—For Commission—Cross.

Q. And when was that? A. Early in September, 1934.

Q. And you met her shortly thereafter? A. I don't know whether it was shortly or not.

Q. Would you say you met her within six months afterwards? A. I wouldn't know that, I can't recall that.

Q. You haven't any idea at all? A. No.

Q. Do you recall the circumstances under which you met her? A. Without knowing definitely, it seems to me that I recall meeting her when she brought to our attention the fact that we had some Guild copy in stock, and asked us to return it.

7583 Q. So that the first time you met her, was when she made the first complaint? Was that the first time you met her, when she made her first complaint as to copy? A. I believe it was, I can't remember.

Q. Would you say that you had not met her before then? A. No, I would not be able to say that.

Q. Do you recall whether or not Miss Kindler approached you in any way, and informed you of the fact that she was going to shop the store? A. No. I understood that to be her function.

Q. When did you so understand that to be her function? A. Some time after I became associated with the upstairs ready-to-wear.

7584 Q. Then you understood that prior to the time when she first brought in a complaint with respect to a specific dress, that it was a copy, isn't that so? A. What was that question?

(Question read by the reporter.)

By Mr. Albert.

Q. Let me put it this way, Mr. Wyzanski. Was Miss Kindler introduced to you, or did you meet Miss Kindler, or did you hear of Miss Kindler as a Guild shopper, prior

to the time when she first made a complaint with respect to any one dress being a copy?

Mr. Haycraft: I object to that question on the ground the witness said he could not remember when it was he met her.

Mr. Albert: I think I should be able to prove the witness' memory, and point out certain things to him, in order to recall it to him.

Examiner Bennett: He may answer.

Mr. Haycraft: He said the first time.

Examiner Bennett: If you have any recollection.

The Witness: I believe that before I met Miss Kindler I knew there was such a person as Miss Kindler who was the Guild shopper. Does that answer your question?

7586

Mr. Albert: Yes, I think that is fair.

By Mr. Albert.

Q. From whom did you learn that fact? A. My assistant, Mr. Byrne.

Q. And what is his position with Mandel Brothers?

A. He is assistant to me in the merchandising of the departments under my supervision in the upstairs store.

Q. Do you recall what it was that he told you about Miss Kindler? A. I can't recall anything he did say, other than the fact that the Guild shopper was Miss Kindler.

Q. Did he tell you as to when he had met her? A. No.

7587

Q. Did he tell you as to the method of her operation?

A. Why, I don't remember whether I knew of her methods from Mr. Byrne, or any previous time as to the method of Guild shopping.

Q. What was the method of Guild shopping? A. Miss Kindler would come in and shop the store, either shopping the store looking for copies, which I understand Mr. Post said in his letter was called open shopping, or she

7588

Henry N. Wyzanski—For Commission—Cross.

would come in looking for a specific copy that some store might have said we had, and she was checking up to see if we had it.

Q. In that latter case, did she first approach you, Mr. Byrne, or any of the buyers, and tell them she had a report that a specific dress is a copy, "this is the diagram of the dress. I am going to look for it. Do you know where it is"? A. No. Her procedure is to go into the department, call it to the attention of the buyer, and ask him to take it off sale.

Q. That is, she would first see the buyer? A. Yes.

7589

Q. Did you just hear me state your testimony here, to the effect that there were two types of shopping? A. Yes.

Q. Was that correct? Was that what you testified to? A. I believe it was.

Examiner Bennett: I will ask the witness this.

By Examiner Bennett.

Q. Have you any detailed knowledge of the procedure by the shopper when she came into your store, that is, to just what she did? A. Not in any particular instance, but her general procedure.

By Mr. Albert.

Q. That's all I want.

7590

By Examiner Bennett.

Q. You know her general procedure, do you? A. Yes. I know her general procedure.

Examiner Bennett: All right. He may answer.

By Mr. Albert.

Q. With respect to this second type of shopping, which a complaint has been made that Mandels has in

stock a copy of a dress, what was the procedure of Miss Kindler with respect to investigating that complaint? A. Go in the department, speak to the buyer, look for the dress, with the help of the buyer.

Q. With the help of the buyer. Then what happened? A. If we had the dress, and if Miss Kindler had the sketch from the Guild, or proof that it was a copy, it was taken off sale and returned.

Q. What proof would you require that the dress was a copy? A. Either a sketch from the Guild, or a signed statement from Miss Kindler that it had been up before a Piracy Committee, and had been adjudged a copy.

Q. Do you know in what manner a dress is adjudged a copy before the Piracy Committee? A. No. 7592

Q. Have you made any inquiry in connection with your duties in order to determine upon what basis a dress has been adjudged a copy, by reason of which adjudgment it is necessary for Mandel Brothers to return a dress?

Mr. Haycraft: Objected to, as too indefinite.

Examiner Bennett: Sustained. He does not seem to know about the piracy procedure, and what is the use of musing it up? That is in the record already.

By Mr. Albert.

Q. Mr. Wyzanski, when did you first hear of the Piracy Committee? 7593

Mr. Haycraft: Objected to as not proper cross-examination, and no foundation laid.

Mr. Albert: This witness has testified, in response to the question, that dresses were returned after they were adjudged copies by a Piracy Committee. We then have a very startling statement that he knows nothing about how the Piracy Com-

7594

Henry N. Wyzanski—For Commission—Cross.

mittee works. I don't think that I am bound by that, and I think I should be permitted to find out what he knows about a Piracy Committee, when he testifies to it voluntarily.

Examiner Bennett: You have the facts upon which to base a judgment as to that. I will sustain the objection to further questioning along this line.

By Mr. Albert.

Q. Now, Mr. Wyzanski, to your knowledge, is there anything secretive about the manner in which Miss Kindler
7595 shopped the various departments?

Mr. Haycraft: That is objected to, unless there is some definition of what he means by "secretive."

Mr. Albert: I would suggest the Commission explain what it means by that in its complaint.

Examiner Bennett: That is a general term. He may answer. Overruled. Have you the question?

The Witness: Was there anything secretive?

Examiner Bennett: Read the question.

(Question read by the reporter.)

The Witness: I would say "no."

By Mr. Albert.

Q. That is, all your buyers knew her, you knew her,
7596 she came in openly, did not attempt to conceal her identity, or what she was doing in any manner, did she? A. No.

Q. Now, you testified, Mr. Wyzanski, that there were various conferences and discussions in your store upon the question as to whether or not Mandel Brothers should co-operate with the Fashion Originators Guild. First, will you tell us who it was that engaged in those dis

discussions or conferences? A. Those that I attended, our general manager, Mr. Mandel, and Mr. Post.

Q. Which Mr. Mandel is that? A. Leon Mandel; and it was generally discussed from time to time at the luncheon table at which all of us ate.

Q. I am referring now particularly to the time when you signed the declaration of co-operation. A. That is what I am discussing.

Q. That is what you are referring to, also? A. Yes.

Q. Is the Mr. Leon Mandel that you refer to the gentleman that is sitting in the room at the present time? A. Yes, he is.

Q. What was the policy of Mandel Brothers with respect to copies and the sale of copies prior to the time when you signed the declaration of co-operation? A. I don't know what the policy was under Mr. Post. 7598

Q. Mr. Post was in charge at that time? A. Yes.

Q. Do you think he would know? A. I would think so.

Q. And he is present in the room now, is he? A. Yes, he is.

Q. Now, Mr. Wyzanski, you testified that you took dresses off sale on proof that they were copies. Is this proof that you refer to the letter that you have also referred to which was generally shown you by Miss Kindler, to the effect that a style piracy committee had passed upon the matter? Is that the only proof you require?

Mr. Haycraft: I object to the form of the question. I don't recall that the witness used the word "proof." 7599

Mr. Albert: If Mr. Haycraft will look at the record, he will see that the witness specifically said "proof."

Examiner Bennett: I will let him answer.

The Witness: Read the question, please.

(Question read by the reporter.)

The Witness: Yes.

7600

*Henry N. Wyzanski—For Commission—Cross.**By Mr. Aibert.*

7601

Q. So that you had full faith and confidence in the actions of the Piracy Committee with respect thereto, and the reports on it presented to you by Miss Kindler? A. Well, I would not go so far as to say that. We would return the dresses, take them off sale and return them, because we had signed a declaration of co-operation with the Guild; and, since it is our function to bring to our customers the best that the market affords, we feel we have to have a free market to do that, and, in order to have a free market, we have to go into the Guild houses, and we would not do anything that would endanger our being deprived of that free market, consequently a statement from the Guild that such and such was a copy would be immediate cause for us taking them off sale and returning them, because we wanted to maintain that free market.

Q. You know what I asked you, don't you? A. I was explaining it.

7602

Q. Let us find out whether Mandel Brothers is fish or fowl. Is it your contention that you are co-operating with the Fashion Originators Guild solely by reason of fear? A. We only are co-operating with the Fashion Originators Guild because we believe that in practice—that is, because although we believe that in practice it has hurt our business in the basement and in some of our upstairs departments, we are co-operating with them so that we can do as we have always done, bring the best in the market to our customers. We believe that is our function, that is for the upstairs store, and that also applies to the basement, in that we feel that we have a policy in our basement of fashion at a price, and we want to be consistent in that policy; and, as I said before, we believe the main buying in the basement is that of economical emulation.

Henry N. Wyzanski—For Commission—Cross.

7603

Q. I would like to get a simple statement from you with regard to the policy of Mandel Brothers, and I will give you all the opportunity in the world to explain all of the fancy terms which you have just used, but I would like a simple statement from you as regards Mandel's policy. Did Mandel, or did Mandel Brothers sign that declaration of co-operation in the sincere belief that style piracy was an evil in the industry, and with the desire to eliminate that evil?

Mr. Haycraft: I have objected to it.

Examiner Bennett: You have your objection. Please don't try to argue across the table in that way. You may ask a foundation question.

7604

by Mr. Albert.

Q. Was there any decision at the conference with respect to whether or not there was such an evil existed in the industry as style piracy? A. There was a discussion of whether or not there was such an evil as style piracy.

Q. What was said about it? A. That it was a very interesting theory.

Q. Is that all that was said about it? A. And that the dress business being as bad as it was at that time, that might be a good thing to go along on this experiment.

Q. Is that all that was said about it? A. No. There was also said that if we did not, we would not have a free market to buy the best merchandise available.

7605

Q. Is that also what was discussed? A. Yes.

Q. What was the merchandise that was available to you in the market at that time, do you know?

Mr. Haycraft: That is objected to.

The Witness: Prior to the signing of the declaration you mean?

7606

*Henry N. Wyzanski—For Commission—Cross.**By Mr. Albert.*

Q. Yes. A. All the merchandise.

Q. What merchandise would you have been cut off from at that time if you had not signed the declaration of co-operation? A. Merchandise coming from those members of the Guild, those people who were members of the Guild at the time of the signing of the declaration.

Q. Who were the members of the Guild at the time of the signing of the declaration of co-operation? A. I don't recall them.

Q. Do you recall their number? A. A member?

Q. Do you recall their number? A. No.

7607.

Q. Do you know whether or not it was more than a hundred? A. I believe it was less.

Q. About how much less would you say it was? Would you say it was ten?

Mr. Haycraft: Mr. Examiner, I object to the form of this question upon the ground that there is nothing to show that this witness is the one who discussed that matter and was informed as to the matter. The record shows that Mr. Post was the man who was in charge of that department. If you want to ask this witness what Mr. Post said about it, all right, but that is not this witness testimony. I object to the form of the question.

7608

Mr. Albert: May I call the Court's attention to the fact that I specifically asked Mr. Haycraft before I commenced cross-examining this witness as to whether or not he was going to call the man who had all the knowledge of it, upon the ground I did not want to start cross-examining this witness as to his knowledge if he was going to call Mr. Post, and Mr. Haycraft stated he was not going to call Mr. Post. Now, he seeks to stop me from cross-examining this witness as to his knowledge as to what happened in his presence.

Mr. Haycraft: No, I am not objecting to your asking this witness as to what transpired at that conference, not in the least. My objection is running to the assumption by the cross-examiner that this witness took certain knowledge to the conference and gave it to the conference. He is examining him as if he were the one who knew those things. The record does not show that. If he wants to ask Mr. Post that, very well, but this witness is not in a position to do that.

Mr. Albert: Will Mr. Haycraft permit me to call Mr. Post while we are in Chicago?

Mr. Haycraft: No. You may call him when we get through with the Commission's side.

7610

Mr. Albert: In other words, the Commission wants to leave its case in a very faulty position at the present time in Chicago as regards the fact that Mandel Brothers signed the declaration of co-operation, and does not want to call the man who signed it on behalf of Mandel Brothers, is that it?

Examiner Bennett: Read the question.

(Question read by the reporter.)

Examiner Bennett: I will sustain the objection. I think we are getting nowhere with that.

Mr. Albert.

Q. Prior to your signing the declaration of co-operation, did you receive any correspondence from the Fashion Makers Guild? A. Did I personally? No.

7611

Q. Did you see any correspondence from the Fashion Makers Guild? A. No, I did not.

Q. Was there any discussion at these conferences as to the number of manufacturers who were members of the Guild? A. I don't know, I don't remember.

Q. Was there any discussion or investigation made prior to your signing the declaration of co-operation as to the

7612

Henry N. Wyzanski—For Commission—Cross.

number of manufacturers in your various markets who manufactured at the price lines which you say you wanted or needed? A. There were none made of me. I don't know whether anybody else did.

Q. Did anybody make any? A. That I don't know.

Q. Was your opinion sought as to the matter at these various conferences? A. Only, in regard to the basement were they sought.

Q. Do you know whether or not Mr. Post made any investigation with respect as to those matters? A. I don't know.

7613

Mr. Albert: Does your Honor want to adjourn at this point? It is the customary adjourning time.

Examiner Bennett: Yes. We will take a recess until 2 o'clock for luncheon.

(Witness excused.)

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION.

(Hearing resumed at 2 o'clock P. M.)

Examiner Bennett: Be in order, please. You may proceed, Mr. Albert.

7614

HENRY N. WYZANSKI thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

Cross-examination (continued) by Mr. Albert.

Q. Now, Mr. Wyzanski, did you make any reply whatsoever to Commission's Exhibit No. 530-A and 530-B? A. No.

Q. With respect to Commission's Exhibit No. 528-A—

Mr. Albert: Did you put this in evidence?

Mr. Haycraft: I thought I did; if I did not, I will offer it now.

Mr. Albert: It should be in evidence.

Mr. Martin: I think, as a matter of fact, it was not offered, Mr. Post spoke up at the time and said a copy of that letter was already in evidence. I do not think it was.

Mr. Albert: Do you know what the number of it was before?

Mr. Martin: No.

Examiner Bennett: Are you going to offer it? 7616

Mr. Haycraft: Yes, we will offer it.

Examiner Bennett: No objection to it. It may be received.

(The letter referred to, heretofore marked for identification Commission's Exhibits 528-A and 528-B, was received in evidence.)

By Mr. Albert.

Q. Did you have any conference with Mr. Post with respect to the subject-matter of this letter, Commission's Exhibit No. 528, dated November 6th, 1935? A. No, not that I can recall.

Q. Did you have any conference with him prior to the receipt of this letter? A. Not that I can recall. 7617

Q. When you say "not that you can recall," are you restricting your answer to a personal conference with Mr. Post, or do you mean by that that you were not present at any conference which was addressed by Mr. Post? A. I meant it on a personal basis.

Q. But you were present at conferences that were addressed by Mr. Post, were you not? A. Yes.

Q. With respect to the subject-matter of this letter?

7618

Henry N. Wyzanski—For Commission—Cross.

Mr. Martin: Show him the letter.

Mr. Albert: What is your answer?

Mr. Ben J. Altheimer: Show the witness the letter so that he knows what you are referring to.

Mr. Albert: I am sorry, I thought he knew what I was referring to.

The Witness: Yes.

(Mr. Albert hands letter to the witness.)

The Witness: No, I was not.

By Mr. Albert.

7619 Q. Now, as a matter of fact, and prior to the receipt of that letter, was not Mr. Post present in Chicago, and did he not address a conference attended by various retail establishments of the City of Chicago? A. I have attended conferences at which Mr. Post spoke in Chicago; but I don't remember the date of them.

Q. Were they not with respect to the subject-matter of that letter? A. I only remember being at one conference in Chicago at which Mr. Post addressed the merchants here, and I—my recollection of that conference did not include all the things in here.

Q. Did not include all the things in there? A. No.

7620 Q. What was there in that conference addressed by Mr. Post that covered any of the subject-matter in that letter? A. My recollection of that conference was that it was the hope of the Guild that they would be able to get the chain stores to sign a Declaration of Co-operation with the Guild, and it was the hope at that time that if he was successful, that would extend our own protection down into lower-priced lines.

Q. What was the date, approximate date, Mr. Wyzanski, I don't want to hold you down even to the precise month—of that conference? A. I haven't—I really don't remember.

Q. Would you say it was the summer of 1935? A. I really don't know.

Henry N. Wyzanski—For Commission—Cross.

7621

Q. Would you say it was the spring of 1935? A. I don't know.

Q. Would you say it was the winter of 1934? A. I know it was not the winter of 1934, because it was after I came upstairs.

Q. So that it was some time in 1935? A. I would say yes.

Q. Did Mr. Post tell you in what manner he expected to get the co-operation of the chain stores? A. As I recall it, he said that he would—expected to get their co-operation by having them sign the Declaration of Co-operation.

Q. Was that the only thing that was discussed with respect to that? A. That I cannot say, I cannot remember. 7622

Q. Now, as a matter of fact, was not the subject of that conference the inclusion in the Guild of the manufacturers of \$6.75, \$7.75 and \$8.75 dresses? A. It may have been, I don't remember..

Q. Is not it a matter of fact that the question at that conference was directly put to the retailers then present, as to whether or not they had any objection to the inclusion in the Guild program of manufacturers of \$6.75, \$7.75 and \$8.75 dresses? A. My recollection is that it was expressed as a hope.

Q. Did you or anybody representing the Mandel Brothers oppose any steps which the Guild might take towards the fruition of that hope? A. No, we did not.

Q. Did you, in any way, present any arguments opposing the inclusion in the Guild of manufacturers of \$6.75, \$7.75 and \$8.75 dresses? A. No. 7623

Q. As a matter of fact, is it not true that every single retailer in the Chicago district who was present at that conference expressed his affirmative consent and acquiescence to the Guild, including in its program the \$6.75, \$7.75 and \$8.75 manufacturers? A. I don't remember that.

7624

Henry N. Wyzanski—For Commission—Cross.

Q. Do you recall that a vote was actually and specifically taken upon the proposition? A. No, I don't recall such a vote.

Q. Would you say that there was no vote taken? A. No, I couldn't say that.

Q. In other words, you do not recall one way or the other whether a vote was taken? A. I do not recall whether a vote was taken or not.

Q. After Mr. Post addressed this conference, did Mandel Brothers, through you, or any other of its subordinates, employees or executives, express its opinion with respect to the subject-matter of the conference either in letters to the F.O.G.A., or otherwise? A. No, we did not, although I believe it is my recollection that Mr. Groff, the head of our New York office, spoke to Mr. Post about it.

Q. Was that discussion which you referred to as having occurred between Mr. Groff and Mr. Post on the question of policy, or was it on the question arising by reason of a particular dress which had been adjudged a copy? A. On the policy as affecting the basement—I don't know that—I cannot answer that question, I was not there, I was not there.

Q. In other words, is this a fair estimate of what you wish to say, that Mr. Groff and Mr. Post had a conversation about something, that you do not know what it was?

A. Well, I know that it was in respect to the basement not being able to carry copies, contrary to our original agreement.

7626

Q. But was there anybody acting under the authority of Mandel Brothers, either Mr. Groff, Mr. Leon Mandel, Mr. Weintraub, Mr. Byrne, or anybody acting with the authority and consent of Mandel Brothers, who, in any method, either orally or in writing, dissented from the policy of including in the Guild program \$6.75, \$7.75 and \$8.75 manufacturers? A. Not that I know of.

Henry N. Wyzanski—For Commission—Cross.

7627

Q. Tell me this, Mr. Wyzanski, assuming that Mr. Post said, as you have testified, that it was the policy of the Guild to include as co-operators the retail chain stores, were you in favor of that inclusion?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Mr. Albert: I think it is most relevant, your Honor, in the light of the testimony.

Mr. Haycraft: Relevant to what? Of what this witness was in favor—

Examiner Bennett: What do you expect to show by that?

Mr. Albert: Since you have testified, Mr. Wyzanski, that Mr. Post stated that the Guild expected to take into co-operation the retail chain outlets, did Mandel Brothers, through any subordinate of any kind, protest against this inclusion, either in writing or orally? 7628.

Mr. Haycraft: Same objection.

Examiner Bennett: Overruled; he may answer.

The Witness: No, because we already had a letter on file making it apply only to the upstairs stores.

By Mr. Albert.

Q. You mean to tell us that it was Mandel Brothers' interpretation of the inclusion of the hope of including chain store operations in the Guild program, that it was not to apply to your basement store? A. No, I mean to say that we already had our objections on file. 7629

Q. Yes. A. And if a decision were reached by the Guild it certainly would have been reached over our objections.

Q. Now, Mr. Wyzanski, did not you understand the purpose of that conference, whatever may have been the understanding before that time, to be the desire on the part

7630

Henry N. Wyzanski—For Commission—Cross.

of the F.O.G.A. to get the consent of all retailers upon inclusion in the Guild program of, one, \$6.75, \$7.75 and \$8.75 manufacturers, and, two, of chain store retailers.

A. I recall that as a hope, yes, that was expressed then.

Q. Well, was not that the purpose of the meeting to find out whether or not there was any objection to that broadening of the F.O.G.A. program? A. I looked upon it as a statement of facts, in the making of which decision we would not have any part, like other decisions.

Q. And you just sat idly by and listened to a statement on the part of Mr. Post, without in any way trying to enlighten him as to your opinions on the matter, is that so?

7631

A. Yes, I think Mr. Post was aware of my opinion.

Q. When did you communicate it to him? A. Well, from the time of our original discussion, that the basement should be included.

Q. When was this? A. December of 1933, at the time we signed the original declaration.

Q. You were present at this conference, were you not? This one you just referred to?

Q. Yes. A. Yes.

Q. You noted your appearance? A. I don't know what that means.

Q. Was your name noted down as being present at that time? A. I was present, I don't know if there was any roll call.

7632

Q. Now, Mr. Wyzanski, what was the purpose of the original reservation that was made in the signing of the Declaration of Co-operation? A. Not allowing copies of styles in our basement store would be inconsistent with the policy of our basement store; which was to promote style merchandise at a price, fashion at a price, and, as I said before, the leading buying motive for customers coming into the basement is that of economical emulation. They want the closest approximation they can possibly get to better merchandise at the price they can afford to pay.

Henry N. Wyzanski—For Commission—Cross.

7633

and we felt that the inclusion of copies from our basement store would be inconsistent with our basement policy. We owe it to our customers.

Q. What was the discussion at that conference with respect to the elimination of copies in your upstairs store, in order to show why you have a reservation in your basement you had to know the problem that was confronted at the upstairs store, did you not, and you discussed that, did you not? A. I don't believe I had to know it, no, I was merchandising the basement at that time.

Q. Do you know anything at all about the problem that confronted your upstairs store? A. At that time you mean?

Q. Yes. A. Just by hearsay of being in on several meetings and discussions and luncheons and the like.

Q. What was said at those discussions and conferences and luncheons or wherever else you got the information from, as to what Mandel Brothers instituted as respecting its upstairs store?

7634

Mr. Haycraft: Objected to, as there is no showing that Mandel Brothers instituted any policy with respect to its upstairs store.

Mr. Albert: If Mr. Haycraft wants to concede they never obeyed the declaration, I will take the concession.

Mr. Haycraft: It is an entirely different proposition, including something and co-operating, are two entirely different terms, as I understand it.

7635

Examiner Bennett: I do not believe this witness is competent to go into the policy of the upstairs store at this time. There is nothing in the testimony indicating that he is.

By Mr. Albert.

Q. Prior to 1934, Mr. Wyzanski, you were, I believe, in charge solely of the basement store? A. Prior to September of 1934?

7636

Henry N. Wyzanski—For Commission—Cross.

Q. Yes, and your first connection with the upstairs store, the upstairs department store, was after September of 1934, is not that correct? A. First connection of a direct responsibility?

Q. Yes. A. I was on the advisory board for the store.

Q. You were on the advisory board for the upstairs store? A. Yes.

Q. Prior to September 1, 1934? A. Yes.

Q. When did you get on that advisory board? A. I don't recall the date.

Q. All right, did not you discuss, as a member of the advisory board for the upstairs department, what effect the Declaration of Co-operation would have on your upstairs store? A. I don't believe so.

Q. Your upstairs departments? A. I don't believe it was ever brought up in an advisory board meeting.

Examiner Bennett: Excuse me. Were you a member of the advisory board before that declaration was signed?

The Witness: Yes, I was.

Examiner Bennett: I will let you go into that.

Mr. Haycraft: I would like, Mr. Examiner, to find out what that advisory board was, counsel said for the upstairs store. Now, I do not know whether that is—

Mr. Albert: Counsel did not say; the witness said that.

Mr. Haycraft: No, the witness did not say that. That is the point. That is the reason I am clarifying that. Read the record.

(Thereupon the record was read as follows: "You were on the advisory board for the upstairs store." A. Yes. Q. Prior to September 1, 1934? A. Yes. Q. When did you get on that advisory board? A. I don't recall the date. Q. All right, did not you discuss, as a member of the advisory board for

7638

the upstairs department, what effect the Declaration of Co-operation would have on your upstairs store?

A. I don't believe so. Q. Your upstairs departments?")

By Mr. Albert.

Q. Does not the advisory board, Mr. Wyzanski, cover the whole store? A. Yes.

Q. Does not it consider the problems of the whole store? A. Some of them, when they are brought up.

Q. Does not it consider the policies for your upstairs ready-to-wear departments? A. It may and it may not. We have no occasion—it is purely advisory to the management. The management may or may not bring things up to the advisory board.

7640

Q. Just exactly who are the advisory board? Are they the experts on policies for the store? A. They are the heads of the various pyramids within the store.

Q. Do you mean to tell us the advisory board of Mandel Brothers did not consider the effect of the signing of the Declaration of Co-operation on the upstairs departments or the ready-to-wear departments, the upstairs store? A. I mean that exactly. As I recall it, it was a determination made by Mr. Post with Mr. Mandel.

Q. And nobody else had anything at all to say about it? A. In making the decision, no.

Q. Did anybody discuss it? A. Not at the advisory board.

7641

Q. Well, now, you say not at the advisory board; where was it discussed? A. Because, as I told you before, I have heard it discussed at lunch, and I have heard it discussed in Mr. Mandel's office with Mr. Post.

Q. Who else was present besides Mr. Mandel and Mr. Post and yourself? A. I don't recall anybody else being there.

7642

Henry N. Wyzanski—For Commission—Cross

Q. And they discussed the effect on the upstairs department store of the signing of the Declaration of Co-operation? A. That I cannot recall; there were many conferences, I may have been in only one or two of them.

Q. Do you recall the ones that you were at? A. Yes, I do, some of them.

Q. What was said as regards the upstairs departments? Forget your basement for a while. A. As I recall it, it was the feeling that Mandel Brothers—

Q. No, no, I do not want the feeling. What was said, Mr. Wyzanski? A. That is what I am trying to give you

Mr. Haycraft: Who said it?

7643

By Mr. Albert.

Q. And who said it?

Examiner Bennett: It is a good deal to ask the witness.

The Witness: I cannot answer.

By Mr. Albert.

Q. Just give us the general substance of the discussion. A. That is what I am trying to do. The feeling was that Mandel Brothers—

7644

Q. No, Mr. Wyzanski, please do not give us the feeling. A lot of things can be said that resulted in an entirely different feeling. What I would like to have is what was said, not the interpretations, your feelings that resulted from a result of what was said. A. I don't believe I could do that, sir.

Examiner Bennett: All right. If you do not recall it—

By Mr. Albert.

Q. So, then, in so far as you are concerned, you can throw no light whatsoever upon the policy of Mandel

Brothers signing the Declaration of Co-operation with respect to the upstairs departments, is that correct? A. That is correct.

Q. And you do not know how Mandel Brothers felt about signing the Declaration of Co-operation with respect to its upstairs departments, is that so?

Mr. Haycraft: Object to it, he has tried his best to tell you what that was, and you would not take it.

Mr. Albert: The sum and substance of it is nothing.

Mr. Haycraft: You would not let him say what the feeling was. He tried twice to tell you what it was. 7646.

Mr. Albert: Since when has the Commission tried its cases on feelings?

Mr. Haycraft: You asked for it right now, and that is what he is trying to tell you.

Mr. Albert: I did not ask for that.

Mr. Haycraft: Read the question and you will see.

(Last question read as follows: "Q. And you do not know how Mandel Brothers felt about signing the Declaration of Co-operation with respect to its upstairs departments, is that so?")

Mr. Albert: As regards to what they said, Mr. Wyzanski.

Mr. Haycraft: I object to that last question. 7647.

Examiner Bennett: Well, sustained.

The Witness: What did you say?

Examiner Bennett: I sustained the objection.

By Mr. Albert.

Q. Are there any intra-office communications in Mandel Brothers between Mr. Leon Mandel and yourself, between

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Henry N. Wyzanski—For Commission—Cross.

Mr. Mandel and Mr. Post, or any other of the executive or employees or buyers of Mandel Brothers with respect to the consideration of whether or not Mandel Brothers should sign the Declaration of Co-operation for its upstairs departments? A. I have looked through the file and I could not find it.

Q. None whatsoever? A. None.

Q. How long were you in charge of the basement store of Mandel Brothers, Mr. Wyzanski, before September, 1934? A. I went to work there on September 1, 1927, as assistant merchandise manager, and became merchandise manager of the basement January 1, 1929.

7649

Q. Prior to your connection with Mandel Brothers, with whom were you associated? A. William Filene & Sons Boston.

Q. William Filene & Sons of Boston? A. Yes.

Q. Were you in charge of the basement there also? A. No.

Q. Were you in the basement in Filenes? A. I was.

Q. Now, Mr. Wyzanski, you referred to approximately 6,600 dresses that you sold, is that correct? A. That's right.

Q. Of that 6,600, how many were copies, do you know? A. No, I believe three styles were adjudged copies. I don't know how many of the 6,600 were of those three styles.

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Q. How many styles were encompassed within that order of 6,600 dresses? A. There was no order for 6,600 dresses.

Q. You mean that there were several orders placed, aggregating 6,600 dresses? A. I mean that we had sold 6,600 dresses.

Q. Do you mean that you purchased more than 6,600 dresses? A. That's right.

Q. How many dresses did you purchase? A. It is very difficult to tell how many dresses were ordered, because

there have been so many cancellations forced on us because some of them were Guild copies, the first of which I mentioned to you when we had the style 809, and then when we were planning to run that off, cut ad style 813, and in order to do which we had to cut our original order down because it made the two-piece dresses out of proportion to the one-piece dresses; so that I cannot tell just what the orders, minus the cancellations, totalled.

Mr. Bennett: I see. You have not the information?

The Witness: Not on the total number of orders.

Examiner Bennett: I see, all right. That's it.

By Mr. Albert.

Q. How many styles were encompassed within the orders that were placed from which you sold the 6600 dresses?

A. Originally six, and then three more were added.

Q. Nine. Of that nine, three have been adjudged to be copies, is that so? A. That's right.

Q. Now, would you say that the sales of those nine styles bear the same proportion as the amount of copied styles bear to the total amount of styles? A. Would you mind repeating that?

Q. That is, would you say that approximately 4400 dresses were sold of the other six styles, and 2200 dresses were sold of the style 809, of the other three styles that you say were adjudged copies? A. No, no, I would not say that.

Q. What would you say the figures were? Have you any idea? A. I haven't got them in my mind, no, but I know that is not the fact, as you have stated it.

Q. Would you say it was fifty-fifty? A. I can't answer that, it would be a guess on my part.

Q. Were the other styles that you obtained, and which were included among the 6600 dresses, good styles? A. Yes, I believe they were good styles.

7654

Henry N. Wyzanski—For Commission—Cross.

Q. Would you call them, in the parlance of the trade, hot numbers? A. Yes, some more than others.

Q. Well, of course, I mean— A. They were not all equal.

Q. Every style is not a hot number, we will all concede that. Now, with respect to the other six styles, that were not adjudged copies, you were not stopped originally from selling those, were you? A. No, we were not stopped from selling them, but it broke up our selling program.

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Q. Just what do you mean by that? A. Well, as I say, we set out to do a big business because we knew we had sold so many last year, 6,000 of them, and we had every feeling that they were hotter this year than last year, to quote your word, and we went in with an original order of 2500 without having sold any, and so we must have had a lot of confidence in the merchandise when, because Miss Kindler had called our attention to the fact that style 809 was a copy, we returned style 809 and we cancelled those on order. I mean, they all did not come in, it was a part shipment. We then had to cut our order down considerably—the number of 809 that we had—because it made it out of proportion. 809 was a one-piece style, and so we had to cut down some of the other numbers, even though they were not copies, and in doing so we destroyed the advertising plan. We did not have enough of the goods. It was very difficult to go into the large advertising campaign that we had originally planned on.

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Q. Were these styles that you have just referred to the same style as Harris had used the previous year? A. No. I said that there was one style 829 that was very similar to the style that he had used last year.

Q. Now, Mr. Wyzanski, have you any idea, or do you know anything at all with respect to the background of the sale of these dresses by Harris, Mandel Brothers, and to these other retail stores, which you had testified had them? A. I don't know what you mean by background.

Henry N. Wyzanski—For Commission—Cross.

7657

Q. Do you know whether or not it was a deliberate plan of Harris to dump these copies on the market?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: Read the question.

(Last question read by the reporter.)

Mr. Albert: At this particular time?

The Witness: No, I don't know.

Mr. Haycraft: Wait a moment, wait a moment, wait for a ruling.

Examiner Bennett: Well, I think the question is of doubtful validity, but it does not mean anything anyway.

7658

Mr. Haycraft: No.

Examiner Bennett: The witness does not know.

By Mr. Albert.

Q. Was Mandel Brothers in any way associated with the A.M.C., Mr. Wyzanski? A. Not in its domestic business, no.

Q. Well, just what are you differentiating? A. We do some of our foreign buying through the A.M.C. foreign offices.

Q. And you, therefore, have access to the A.M.C. for information and for assistance and advice on various things? A. Not on domestic matters.

Q. Not on domestic matters? A. (Witness shakes head negatively.)

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Mr. Haycraft: You will have to say "yes" or "no," the reporter cannot get the shaking of your head.

The Witness: No.

By Mr. Albert.

Q. As a matter of fact, Mr. Wyzanski, does not Mr. Groff of your New York office have occasion to very often

7660

Henry N. Wyzanski—For Commission—Cross.

consult with the A.M.C. as to policies of buying, as to various resources, and things of that concern? A. In fulfilling his function as head of the New York office he consults with most everybody in the market for advice.

Q. Including the A.M.C.? A. Yes, he consults with them too.

Q. Is it not a matter of fact that Mr. Groff in his capacity as head of the New York office joined the A.M.C. and subsidized advertising? A. I don't get that at all.

Mr. Haycraft: Read the question.

Mr. Albert: The question is withdrawn.

Mr. Haycraft: Physically?

7661

Examiner Bennett: It is withdrawn.

By Mr. Albert.

Q. Now, did you ever have any discussions with Mr. Harris with respect to this particular order? A. The original order?

Q. Yes. A. No.

Q. None whatsoever? A. No.

Q. The order was just placed? A. Oh, I knew about it.

Q. Without any discussions? What? A. Oh, I knew about it long before the order was placed, I knew that they were going to try to do something to beat our last year's figures and go ahead with them.

Q. Did not Mr. Harris tell you that these three styles were copies of merchandise? A. No.

7662

Q. You are quite certain of that? A. Quite certain.

Q. Now, after the original order was placed, Mr. Wyzanski, did you have any conferences with Mr. Harris with respect to the order? A. No—what do you mean? How long after?

Q. Any time after, after you placed the order? A. Not until such time as we had sent back 809 and cancelled the rest of 809.

Q. Is it not a matter of fact that the first time that you had any knowledge of the fact that these dresses were being sold in the New York market was when Mr. Harris informed you of that? A. Oh, no, no.

Q. When did you first learn that these dresses were sold in the New York market? A. When I saw the ads in the New York stores, Guild stores.

Q. How long was that after you received notice of the fact that the dresses that you had were copies? A. As to date, I cannot answer, but I know that I saw the ads on these styles after we had returned ours, run by Guild stores in New York.

Q. Do you know when these dresses were delivered to the New York stores, or when they placed their orders for these dresses? A. Since ours was one of the initial orders, why, I assume, it was after ours.

Q. That is exactly the point. Was not Mandel Brothers the first concern that received a delivery of these dresses from Harris? A. Well, that I couldn't tell, I don't know.

Q. Did you not just say you were one of the initial stores? A. To order?

Q. Yes. A. Yes.

Q. What makes— A. It would be natural if you had that much business to go against, you would start early planning to go against it.

Q. You do not mean to convey to the Commission the idea, do you, that the New York stores were selling these dresses for some time prior to the delivery to you of these dresses and for some time prior to you being informed that you were handling copies? A. Prior to what delivery?

Q. Prior to the delivery to you of these styles? A. You mean prior to the delivery which we were forced to return?

Q. Right. A. That I don't know.

7666

Henry N. Wyzanski—For Commission—Cross.

Q. Now, as a matter of fact, Mr. Wyzanski, as a result of the correspondence attached with respect to this particular transaction, and as a result of the conference or the discussions that you had with Mr. Post, and from what you heard on behalf of Mr. Harris, is not this the fact, that Mandel Brothers were the first ones to place the order with Harris, that subsequently the New York stores in a very short time thereafter also placed their orders and placed their advertising for it, and, as soon as it was pointed out that the New York stores had these copies, they also were informed of the fact that they were selling copies and were ordered to take them off, or requested to take them off, is that not so? A. Well, part of that question you asked me something about whether the New York stores ordered, but I have no idea when they ordered theirs.

7667

Q. And you have no idea from that, despite the communications that you had with respect to this matter with the F.O.G.A., and despite your discussions with Mr. Post, and whatever discussions you may have had with Mr. Harris, or with Mr. Groff of your New York office? A. As to when the other stores originally ordered theirs, is that the question?

Q. Yes. A. I don't know when the other stores originally ordered theirs.

7668

Q. How long a period of time would you say elapsed between the time that you were notified that you were selling a copy, or had a copy in stock, at the time that you saw the dress advertised in the New York market? A. I remember the date as being the 14th that I received a wire in our New York office, asking them to speak to Mr. Post about the possibility of our carrying style 809, and it was some time from between then, and I would say the end of the month, that I saw these ads in New York after we had returned style 809.

Henry N. Wyzanski—For Commission—Cross.

7669

Q. This, you say, was about May 14th? A. My wire to our New York office was of May 14th to speak to Mr. Post about it.

Q. About the question of whether or not 809 was—
A. About—

Q.—I mean were copies? A. Yes, about asking Mr. Post's permission for us to carry it.

Q. You are certain that that wire was not sent in April?
A. Yes, quite certain.

Q. You are sure of that? A. Yes, I think so.

Q. It was sent around May 14th? A. Yes.

Q. That is when you first learned or had any suspicion of the fact that 809 was a copy? A. Yes, it was called to our attention by Miss Kindler immediately preceding that.

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Q. Yes, and you are as certain of that testimony as you are of everything else you testified to? A. Well, I am reasonably certain of it.

Q. And are you as certain of everything else as you are of that? A. I cannot differentiate.

Mr. Haycraft: I object to that question.

Examiner Bennett: Sustained.

The Witness: Might I refresh my memory and look up that wire? I have it here.

Examiner Bennett: Yes, certainly.

The Witness: Will you get that wire? So that I can refresh my memory on it?

7671

Mr. A. J. Altheimer: It is an exhibit, is it not?

Mr. Haycraft: No.

The Witness: I asked the Court if I could refresh my memory.

Mr. Albert: May I ask the indulgence of the Commission a moment or two?

The Witness: May I talk to my attorney a moment?

Examiner Bennett: Yes, certainly.

7672

Henry N. Wyzanski—For Commission—Cross.

(Witness leaves the stand.)

Examiner Bennett: The Examiner has permitted the witness to refresh his recollection as to that date in order to get that date correct.

If you wish to you may ask him about it, if you wish.

By Mr. Albert.

Q. Do you still say the date is May 14th? A. The date on it, the date on which I wired the New York office—it was May 14th.

7673

Mr. Albert: I would like to have the telegram marked for identification.

(Thereupon a paper was marked Respondents' Exhibit 52 for Identification.)

Mr. Martin: That is this year?

The Witness: Yes.

Mr. Albert: I offer in evidence the Respondents' Exhibit No. 52.

Examiner Bennett: Received.

(The telegram referred to, heretofore marked for identification Respondents' Exhibit 52, was received in evidence.)

By Mr. Albert.

7674

Q. Now, Mr. Wyzanski, I believe that in taking out Respondents' Exhibit No. 52 in evidence you also took a letter from your file by which you refreshed your recollection, is that right? A. No, it was just attached to that.

Q. Attached to that telegram? A. Yes.

Q. Did it have anything to do with the telegram?

Mr. Haycraft: Did it have anything to do with the telegram—that is objected to.

Examiner Bennett: I will sustain the objection to the examination.

By Mr. Albert.

Q. Did the letter which you took from your file in any way amplify or give any information with respect to the subject-matter of the telegram in so far as Mandel Brothers is concerned?

Mr. Haycraft: I object to the fishing expedition.

Mr. Albert: It certainly is a fishing expedition, I admit it.

Mr. Haycraft: I object to it.

7676

Mr. Albert: This witness took a letter which certainly had some connection with the telegram, your Honor.

Examiner Bennett: I sustain the objection.

Mr. Albert: I offer in evidence a letter extracted by the witness from the letter file to which he has referred to as being attached to Respondents' Exhibit No. 52, which is now in the right inside coat pocket of the witness.

Examiner Bennett: That offer will be stricken from the record. There is no such letter before the Examiner.

Mr. Albert: I offer in evidence a piece of paper that is in the right inside coat pocket of the witness, which he has testified was attached to Respondents' Exhibit No. 52.

7677

Mr. Haycraft: Where do you think you are, in Turkey, Russia, or where?

Mr. Albert: I thought so all the way up to now. I think you are beginning to see the relevancy of it.

Mr. Haycraft: I am beginning to see your tactics, all right enough.

7678

Henry N. Wyzanski--For Commission--Cross.

Examiner Bennett: The language of the offer may be stricken from the record.

Mr. Albert: Don't tell me that the Government is afraid of the respondents.

Mr. A. J. Altheimer: Your Honor please, the only purpose the witness had was to look at the telegram for the purpose of refreshing his memory. Counsel has asked him a pointblank question, "Are you as sure about that date as you are about the other testimony you have given?", and the witness went to the record for the purpose of finding that one telegram to refresh his memory on the subject.

7679

Examiner Bennett: Yes, we are not going any further in the record on that.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Wyzanski, what do you mean in Respondents' Exhibit No. 52, "Disappointed delivery so bad"? A. May I see it? It meant that we had not gotten complete delivery on our 2,500 dresses.

By Mr. Albert.

Q. When did you get complete delivery? A. Well, we never got them, because we had to cancel.

7680

Q. Is that what you were referring to? Is that what you were referring to by the bad delivery, "disappointed delivery so bad"? A. Disappointed on our delivery of our complete order.

Q. When did you return Harris style 809? A. I have no recollection of that date; prior to that, I imagine, am not sure.

Q. Is it not a matter of fact that you did not return any Harris style number of dresses until after this tele

gram? A. Oh, yes, excuse me, we took them off sale, we did not return them.

Q. So that at the very time that you were informed that Harris style 809 was a copy, the delivery was bad up to that time, is that not so? A. Yes, but there is a big distinction between May 14th and June 20th.

Q. But up to May 14th delivery on style 809 was bad, was it not? A. Wasn't complete.

Q. So that your previous testimony that "disappointed delivery so bad" referred to the fact that you could not get delivery because it was a copy, that is so, is it not? A. I don't recall making that statement.

Q. Did not you attempt to convey the thought that "disappointed delivery so bad" referred to the fact that delivery had been stopped on 809 because it was a copy?

7682

A. At the time I sent this wire, as you pointed out, we had not as yet returned the dresses, because the wire said: "However, under present arrangement compelled to return copies suggest Groff or Leon Mandel state situation to guild to see if exception could be made to keep us competitive with other stores that have copies of same style." So at that time we had hopes of continuing running style 809, otherwise I never would have made this reply and among other styles that were not then on delivery, 809 was one. Is that what you meant?

Q. And the fact delivery was bad had nothing whatsoever to do with the fact that you had been informed that it was a copy, was that not so? A. I don't see any relation between the two.

7683

Q. How far behind was Harris in deliveries on May 14th?

Mr. Haycraft: That is objected to. There is no relation between the two. Why go into it?

Examiner Bennett: Read the question.

(Question read by the reporter.)

7684

Henry N. Wyzanski—For Commission—Cross.

Mr. Albert: May I point out to your Honor the purpose of that question?

Examiner Bennett: Yes.

(Short interruption.)

Examiner Bennett: You may answer.

The Witness: I don't know.

By Mr. Albert.

Q. Have you any idea? A. No, I cannot recall.

Q. Were they eight weeks behind on delivery? A. I don't know the date of the original order. I couldn't say.

Q. Can you get it? A. I imagine it is on file in our
7685 New York office; the order was placed in New York.

Q. Is that the only place where it was on file?

Mr. Haycraft: That is objected to. It is so far away from the issues.

Examiner Bennett: I will sustain an objection to asking the witness to get further information unless he has it in his possession here.

Mr. Albert: Is that information in Chicago?

Mr. Ben J. Altheimer: If your Honor please, we will make an objection to the interrogation of the witness along that line.

Examiner Bennett: Beg pardon?

Mr. Ben J. Altheimer: I say, we will make an objection.

7686

Examiner Bennett: Yes. Well, I have always advised witnesses that on cross-examination they were not under obligation to go out and get new matter for the cross-examination, and I still advise the witness to that effect. If he wants to do it as an accommodation to the cross-examining attorney, I have no objection; but, as an obligation, I advise him that he is under no obligation, and I so instruct this witness.

Mr. Albert: Do I understand, then, that the witness declines to give the information?

Mr. Ben J. Altheimer: Counsel objects to it, and the Court sustains the objection.

Mr. Albert: Very well.

By Mr. Albert.

Q. In what record will such information be found?

Mr. Haycraft: That is objected to.

Mr. Ben J. Altheimer: I renew the objection.

Examiner Bennett: Objection sustained.

By Mr. Albert.

Q. Is there a record of such an order, and of the delivery date with respect thereto?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Albert: If it please the Court, the witness has refused, upon advice of counsel, to give me the information. The only way I can find out sufficient about such an order to name it in a subpoena duces tecum is by finding out from the witness exactly where the record may be obtained. I am not asking him to disclose the contents of it, but unless I can at least question the witness as to what the name of it is, the respondent is hamstrung in its attempt to receive the testimony. The only place we can find that out is from Mandel Brothers.

Examiner Bennett: When you get to that point, I think, as a matter of fact, that you have sufficient information. I am sure you cannot get a subpoena duces tecum to get it on cross-examination.

Mr. Albert: No. I mean, however, when we get back to New York.

7690

Henry N. Wyzanski—For Commission—Cross.

Examiner Bennett: That is later.

Mr. Albert: Very well, your Honor. Exception.

Examiner Bennett: All right.

By Mr. Albert.

Q. Now, Mr. Wyzanski, what do you mean, in Respondents' Exhibit 52 in evidence, by "Paris Style 809 direct copy"? What do you mean by "direct copy"? A. I mean Miss Kindler had come in and told us that the dress is a direct copy, and we must take it off sale, and return it.

Q. What is a "direct copy," a copy of what? A. Under the Guild regulations a copy of a Guild dress.

7691 Q. You mean a copy of an original style? A. I believe that is the usual wording.

Q. Did anyone associated with Leon Mandel have any conference with Mr. Harris with respect to these styles that you have been referring to?

Mr. Haycraft: Objected to as too indefinite.

Examiner Bennett: I will let him answer if he knows.

The Witness: Yes.

By Mr. Albert.

Q. Who? A. Our New York office.

Q. By that do you mean Mr. Groff? A. Mr. Groff and Mr. Eisinger.

7692 Q. Aside from Mr. Groff and Mr. Eisinger, did anyone from Mandel Brothers discuss with Harris the question of these styles being copied? A. In answering my first question, there wasn't anything about copies in the question, I might not have answered it right.

Mr. Haycraft: That is why I said it was too indefinite, Mr. Examiner. That is why I objected to it.

Henry N. Wyzanski—For Commission—Cross.

7693

Examiner Bennett: Yes. I will sustain an objection to that question.

Mr. Haycraft: I move to strike the answer.

Examiner Bennett: It may be stricken.

By Mr. Albert.

Q. Did Mr. Groff or Mr. Eisinger in any way discuss with Mr. Harris—

Mr. Albert: Question withdrawn.

By Mr. Albert.

Q. Do you know the substance of the discussion between Mr. Groff and Mr. Eisinger and Mr. Harris?

7694

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. With respect to these styles?

Mr. Haycraft: There is nothing in the record on that.

By Examiner Bennett.

Q. You were not present? A. No, sir.

Q. Were they under your instructions? A. I was responsible for their action, yes.

Q. Did they report to you on this particular question?

A. After the style had been declared a copy, not before.

7695

Q. Do you know what they did? Do you know about the substance of what their conference was about with Harris? A. Yes, I do.

Examiner Bennett: Very well.

7696

*Henry N. Wyzanski—For Commission—Cross.**By Mr. Albert.*

Q. What was that substance, Mr. Wyzanski? A. That I had told them we would have to return the style because it was a copy, and they went to talk it over with Harris and he told them that other stores that were co-operating with the Guild were buying the dresses, and he did not see any reason why we should not buy them.

Q. Did he tell you anything else? A. Not that I can recall.

Q. Do you know whether or not Mr. Byrne had any discussion with Mr. Harris? A. Yes, he did, but that was not at that particular time. He was in Chicago at that time.

7697

Q. Who was in Chicago? A. Mr. Byrne. He later discussed it with Mr. Harris, I believe.

Q. Did Mr. Byrne tell you what was his discussion with Mr. Harris? A. Yes.

Q. What was the discussion that Mr. Byrne had with Mr. Harris? A. That Mr. Harris said we were very foolish letting his business slip out of our hands, because other stores co-operating with the Guild were buying them.

Q. Did Mr. Harris tell Mr. Byrne anything else? A. Not that I know of.

Q. Do you know whether or not Mr. Leon Mandel had a discussion with Mr. Harris? A. I don't believe Mr. Leon Mandel had a discussion with Mr. Harris.

7698

Q. As a matter of fact, didn't Mr. Harris tell you that these styles had been given to him by the A.M.C. to copy? A. He definitely did not.

Q. Are you quite certain? A. Positive.

Q. Did he tell that to Mr. Groff? A. Not that I know of.

Q. Did Mr. Groff tell you that he told him? A. No.

Q. Did he tell that to Mr. Eisinger? A. Not that I know of.

Q. Did Mr. Eisinger tell you that he told it to him? A. No.

Q. Did he tell that to Mr. Byrne? A. Not that I know of.

Q. Did you obtain information from any source— A. I didn't get that first part.

Q. Did you obtain information from any source that Mr. Harris had been given these styles to copy by the A.M.C.? A. No.

Q. Now, Mr. Wyzanski, in abiding by its express declaration of co-operation with the Guild, did Mandel Brothers' store abide by the letter as well as the spirit of the declaration? Did Mandel Brothers use all of the dresses which you have referred to as being ordered in that group of nine styles, of which you sold 6600?

7700

Mr. Haycraft: Objected to as meaningless.

Mr. Albert: To dispose of.

Examiner Bennett: He may answer.

Mr. Haycraft: He has already answered that question.

Examiner Bennett: Read the question.

(Question read by the reporter.)

Examiner Bennett: Sustained. I think we have gone into that as far as is proper.

By Mr. Albert:

Q. Did Mandel Brothers always return to the manufacturer dresses which had been adjudged copies of Guild manufacturers' dresses? A. In all except one instance.

7701

Q. What instance was that? A. In one instance we took advantage of the clause in our rider that if the manufacturer did not want them back, we reserved the right to dispose of them as we saw fit. That is in the letter that excepted the basement, attached to our original riders, clause No. 2.

Q. Do you know how you disposed of the dresses in that instance?

7702

Henry N. Wyzanski—For Commission—Cross.

Q. Mr. Wyzanski, do you know whether or not Mandel Brothers ever purchased merchandise from Guild manufacturers and then resold the same to retailers who had been red carded?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Mr. Ben J. Altheimer: Same objection.

Examiner Bennett: Objection sustained.

7703

Mr. Albert: Exception. If the Court please, I offer to prove that if this witness had been permitted to answer this question he would have answered that Mandel Brothers had purchased merchandise from Guild manufacturers not for its own consumption, and that it had shipped it to retailers who had been red carded for sale by such retailers.

Mr. A. J. Altheimer: For the purpose of this record we take exception to the statement of counsel, as to what he is offering to prove by this witness in this case.

Mr. Haycraft: I move to strike it.

Mr. A. J. Altheimer: And we move to strike it.

Examiner Bennett: It may be stricken.

By Mr. Albert.

7704

Q. Now, Mr. Wyzanski, what effect upon your upstairs department has the sale of a copy of a dress being sold in the upstairs department when sold in the basement?
A. What was the question again?

(Question read by the reporter.)

By Examiner Bennett.

Q. Is that an actual situation? A. It is a conceivable situation.

Examiner Bennett: All right.

Henry N. Wyzanski—For Commission—Cross.

7705

The Witness: I have no facts upon which I could base any answer.

By Mr. Albert.

Q. What effect upon your upstairs department has the sale of a copy?

Mr. Albert: Question withdrawn.

By Mr. Albert.

Q. Mr. Wyzanski, do you know that certain manufacturers in the industry contend that there is an evil existing known as style piracy?

7706

Mr. Haycraft: That is objected to as irrelevant and immaterial

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Do you know that there are certain retailers in the industry who contend that there is such an evil existing in the industry, known as style piracy?

Mr. Haycraft: Same objection; irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: Same ruling.

Mr. Haycraft: Beg pardon?

Examiner Bennett: Same ruling.

7707

By Mr. Albert.

Q. Did you discuss at the time of signing the Declaration of Co-operation the question that there existed an evil in the industry known as style piracy? A. That question came up for discussion in some of the conferences that I was at.

7708

Henry N. Wyzanski—For Commission—Cross.

Q. Is it true that at the time of the signing of that Declaration of Co-operation Mandels believed that the principles declared by the members of the Guild with respect to the program were proper for the protection of the public, the retailer and the manufacturer?

Mr. Haycraft: That is objected to. There is no foundation laid to that question. The witness said it was discussed, then counsel asks him whether or not that was Mandel's policy.

Examiner Bennett: Well, do you know anything about it? I will let you answer if you know. Read the question.

7709

(Question read by the reporter.)

The Witness: They thought it was a theory which might well be experimented with.

By Mr. Albert.

Q. And you have experimented with that theory— A. We have.

Q. —up to the present date? A. We have.

Q. And you have not withdrawn your Declaration of Co-operation? A. We have not.

Q. And since the broadening of the scope of the program of the Guild—

Mr. Albert: Question withdrawn.

7710

By Mr. Albert.

Q. Mr. Wyzanski, does Mandel Brothers believe that manufacturers of original dresses should be protected in the design of those dresses?

Mr. Haycraft: That is objected to. There is nothing to show there is such a thing, no foundation laid for that question.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Have you ever gone into the New York market to assist in buying dresses? A. To assist in buying them?

Q. Yes. A. I have gone into the New York market with the buyers to give them my advice.

Q. In the course of your duties have you ever made a comparison of the dresses which have been adjudged copies with the dress of which they have been claimed to be copies? A. I have seen both, yes.

Q. What was the basis of your comparison? A. There was no comparison that I made.

Q. You just looked at them? A. That's all.

Q. Aside from the administration on behalf of Mandel Brothers of the policies set forth in the Declaration of Co-operation, have you any knowledge of the theory upon which such Declaration of Co-operation is predicated; as to the meaning of style piracy or origination in dresses, and of the right to protection of origination in dresses?

7712

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: I will let him answer.

The Witness: What is the question, please?

(Question read by the reporter.)

The Witness: I have some ideas about it.

By Mr. Albert.

Q. What was there about the Guild merchandise which made it necessary for you to obtain the same and which formed the basis for your signing the Declaration of Co-operation as you have testified to? A. I didn't know that I had testified to that.

7713

Examiner Bennett: What was that question?

(Question read by the reporter.)

7714

Henry N. Wyzanski—For Commission—Cross.

Mr. Haycraft: I did not get to object before the witness answered, but I object to the form of the question.

Examiner Bennett: If he understands the question, I will let him answer. I think he has already answered it two or three times.

By Mr. Albert.

Q. Did you not testify, Mr. Wyzanski, that the reason why the Declaration of Co-operation was signed was in order to obtain merchandise from the Guild manufacturers? A. I testified that that was one of the reasons.

7715 I did not say that was the only reason.

Q. What were the other reasons? A. That Mandel Brothers was interested in experimenting with this theory of style protection to see if it could be successful.

Q. Was that by reason of your belief that an evil existed known as style piracy? A. It had nothing to do with my belief at the time.

Q. How about Mandel Brothers' belief?

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. Do you know anything about it?

Mr. Haycraft: No foundation laid.

7716

By Examiner Bennett.

Q. Do you know whether Mandel Brothers had any belief on that subject? A. Yes. I believe—it is my recollection that they thought it was a theory worth experimenting with.

Henry N. Wyzanski—For Commission—Cross.

7717

By Mr. Albert.

Q. That the protection was a theory worth experimenting with, isn't that what you said? A. That protection was? What do you mean?

Q. That protection of styles was a theory worth experimenting with. A. Yes, that is right.

Q. What was it that they thought would be a good idea to try to protect? A. Prevent the copying of better dresses.

Q. What was there about the better dresses that was copied? A. Those facts that would make a style piracy committee adjudge it to be a copy.

Q. Have you any knowledge as to what those facts are? A. No specific knowledge.

7718

Q. Isn't it a matter of fact that what was sought to be protected and what Mandel Brothers was trying to protect was the style of dresses as originated by these manufacturers?

Mr. Haycraft: That is objected to. There is nothing to show these manufacturers ever originated anything yet.

Mr. Albert: I am asking this witness—

Mr. Haycraft: There is no foundation for it.

Mr. Albert (continuing) —if that is what he was trying to protect.

Mr. Haycraft: There is no foundation for it.

Mr. Albert: Do you have to lay a foundation for everything you ask this witness? We are finally getting this witness to the point where he is admitting a few things.

7719

Examiner Bennett: Read the question.

(Question read by the reporter.)

Mr. Haycraft: I say there is nothing to show that there is anything, Mr. Examiner—that they ever originated any.

7720

Henry N. Wyzanski—For Commission—Cross.

Examiner Bennett: I will sustain the objection to that. It seems to be loaded.

Mr. Albert: Exception.

By Mr. Albert.

Q. Was the copying of better dresses, whatever that may mean, an evil at the time that you signed that Declaration of Co-operation? A. There was a question as to whether it was an evil. There was a definite question as to whether it might have been or might not.

Q. Was there any discussion with respect to that? A. I believe there was.

7721

Q. Was there any decision on that discussion as to whether or not the copying of better dresses was an evil or was not an evil? A. I think the decision was to be left to experience by co-operating with the Fashion Originators Guild, that it was a theory we wanted to experiment with.

Q. What theory did you want to experiment with? A. Whether copying, style piracy, was an evil.

Q. Do you mean to tell me that Mandel Brothers declared they would co-operate with a scheme to protect something which it did not believe was an evil? A. I didn't say it did not believe it was an evil. I said it did not know; it might be and it might not.

7722

Q. Without knowing or deciding that an evil existed, they signed a Declaration of Co-operation to return dresses? A. They quite evidently did.

Q. Can you explain how co-operating in a policy of protection demonstrates that an evil exists?

Mr. A. J. Alheimer: If your Honor please, before the witness answers that question I would like to have some definition read into this record as to what type of evil counsel is questioning the witness about. Is he talking about evil from the standpoint

of the manufacturer, or evil from the standpoint of the retailer, or evil from the standpoint of the consumer? Just what is this evil we have heard a great deal about this afternoon?

Mr. Albert: I will be very glad to enlighten counsel. I read from the Declaration of Co-operation signed by Mandel Brothers—signed by Albert M. Post, who was at that time merchandise manager of Mandel Brothers, and, if the Commission wishes to obtain the information that counsel has requested, Mr. Post is in the room at the present time and can testify fully as to it. As regards the actual matter in hand, in order not to have any encumbering of the record, I ask counsel particularly to read what Mandel Brothers signed.

7724

Mr. A. J. Altheimer: I would suggest that you confine your questions to the witness' end of this declaration of policy and what it shows.

Mr. Albert: May we have the last question and the answer? That is, may we have the last question read and may the witness answer it?

(Question read by the reporter.)

Mr. Haycraft: I object to that as argumentative.

Examiner Bennett: Objection sustained.

Mr. Albert: Exception.

By Mr. Albert.

7725

Q. Will you explain what there is in the mechanics of protection that would reveal to Mandel Brothers the existence or non-existence of the evil of style piracy?

Mr. Haycraft: Same objection.

Examiner Bennett: I will sustain that objection.

Mr. Albert: Exception.

7726

*Henry N. Wyzanski—For Commission—Cross.**By Mr. Albert.*

Q: Does Mandel Brothers still subscribe to the Declaration of Co-operation as signed by it originally? A. Mandel Brothers still subscribes to the original declaration, plus the rider that we attached to it.

Q. In the light of the fact that the program of the Fashion Originators Guild to-day, subscribed to by those who have signed the Declaration of Co-operation and are abiding by it to-day, does not include the rider, Commission's Exhibit 527-B, is the Fashion Originators Guild to interpret your answer as a withdrawal of your Declaration of Co-operation?

7727

Mr. A. J. Altheimer: We object. That is not an issue for this hearing. Whether or not Mandel Brothers stays with the Guild or no longer stays with it certainly should not be decided by the witness.

Mr. Albert: We have had an equivocal answer by this witness. It has been demonstrated, I believe, thus far that the policy of the Guild does not include the exceptions at present contained in Commission's Exhibit 527-B. This witness has stated that the policy of Mandel Brothers as of to-day has not in any way altered, and that in so far as it was concerned they agree with the policy of co-operation only in so far as Commission's Exhibit 527 is consistent with their original declaration. I believe, in the light of the testimony that has been given, the Commission should know and should be informed as to what is the intention of this witness.

7728

Examiner Bennett: What is the pending question?

(Question read by the reporter.)

Examiner Bennett: Objection sustained.

Mr. Albert: Exception.

Henry N. Wyzanski—For Commission—Cross.

7729

Examiner Bennett: That is a matter you can settle between the Guild and Mandel Brothers. We are not going into that.

By Mr. Albert.

Q. Has your experience with protection of styles in the light of your co-operation pursuant to the Declaration of Co-operation shown there is an evil known as style piracy in the industry?

By Examiner Bennett.

Q. Do you understand that? A. It is very difficult for me.

7730

Examiner Bennett: Read the question.

(Question read by the reporter.)

Mr. Haycraft: That is objected to; too indefinite as to what he means by "industry."

Examiner Bennett: I will let him answer if he understands it.

Mr. Ben J. Althimer: Evil to whom; if your Honor please? To the retailer, the manufacturer or to the buyer?

Mr. Haycraft: It is too indefinite.

Mr. Albert: I will accept the amendment to the question. I will let him answer it individually.

Examiner Bennett: I will let him answer the whole matter, if he recognizes any evil in the industry. I imagine we will have to take it by and large as to whether it is, on the whole, an evil or a benefit.

7731

Mr. Haycraft: It is also objected to as irrelevant and immaterial to the issues.

Examiner Bennett: I will let him answer. If he knows, he may answer.

7732

*Henry N. Wyzanski—For Commission—Cross.**By Mr. Albert.*

Q. And if you want to differentiate between manufacturer, retailer and consumer and state either that it is or is not an evil with respect to either one of them, you may answer it in that way. A. We like to look at it from a customer viewpoint and we are interested in the experiment as being possibly beneficial to those customers that buy better dresses in our store. I believe that was one of the hopes with which we signed the declaration. That is why we called this theory an experiment. And, while we believe that it has been of benefit to dresses in the better price lines, we cannot establish it, we cannot seem to prove it within our store. As I have stated before, it has definitely hurt the basement because it is contrary to our policy down there.

7733

Q. Would you say that style piracy is an evil in the industry in so far as the manufacturer is concerned? A. I don't know.

Mr. Haycraft: That is objected to; no foundation laid.

Examiner Bennett: Sustained.

The Witness: I am not a manufacturer.

By Mr. Albert.

7734

Q. Would you say that style piracy was an evil in the industry in so far as the retailer was concerned, with the exclusion of the basement?

Mr. Haycraft: I object to that.

Examiner Bennett: I will sustain the objection. He has answered that as fully as he can, it seems to me, and very frankly.

(Whereupon, at 4.30 o'clock P. M., August 24, 1936, the hearing in the above entitled matter was adjourned, to reconvene at 10 o'clock A. M. of the following day, Tuesday, August 25, 1936.)

Henry N. Wyzanski—For Commission—Cross.

7735

Room 1123, New Post Office Building,
433 West Van Buren Street,
Chicago, Illinois,

August 25, 1936.

Met pursuant to adjournment, 9 o'clock A. M., C. S. T.
Before: JOHN W. BENNETT, *Examiner.*

Same appearances, and:

GEORGE H. LIKERT, Jr. (1313 Wells Building, Milwaukee, Wisconsin), appearing for Ed. Schuster & Company, Inc.

7736

PROCEEDINGS.

Examiner Bennett: Be in order, please.

HENRY N. WYZANSKI thereupon resumed the stand as a witness for the Commission and, having previously been sworn, testified further as follows:

Cross-examination (continued) by Mr. Albert.*

Q. Mr. Wyzanski, after the signing of the Declaration of Cooperation do you know what instructions were given the buyers with respect to the merchandise that they purchased, specifically with respect to the purchase of copies?

7737

Mr. Haycraft: That is, objected to unless it is restricted to the department over which Mr. Wyzanski had direction at that time.

Mr. Albert: He may still know, if it please the Court, the instructions generally.

7738

Henry N. Wyzanski—For Commission—Cross.

Examiner Bennett: Well, if he knows. You may answer as to your department, if you know, Mr. Wyzanski, or if you have knowledge you may answer.

The Witness: I do not know definitely.

By Mr. Albert.

Q. Do you know for your own department? A. None of those provisions applied to my own departments at that time.

Q. Well, what was the practice among the buyers in your department?

7739

Mr. Hayercraft: Objected to; no foundation laid.

Mr. Albert: This happens to be the laying of the foundation, your Honor.

Examiner Bennett: Ask him if he knows. If you know, you may answer.

The Witness: My buyers at that time went out and bought merchandise as they always have.

By Mr. Albert.

Q. That is, I mean, frankly, Mr. Wyzanski— A. Yes.

Q. —I want the record to be clear—that is, your buyers did not? A. You are talking about the sub-buyers at the moment, are you not?

7740

Q. Yes. I mean, they did not go out and look for copies; they bought merchandise, that is all; they bought dresses as they saw them? A. They bought dresses that they thought the public would like best.

Q. Right; and in attempting to purchase them they did not specifically go out and look for a copy of any particular dress, did they? I mean, they shopped the market and bought what they thought was proper for the department?

A. I would not say that. We always had the thing out

down in the basement as to what—not only our upstairs store, but other upstairs stores were doing.

Q. Yes. A. And we attempted to get the same type of merchandise in our basement. at basement prices,

Q. Well, would you then say that in the basement your buyers specifically attempted to purchase copies of the better dresses? A. I would not make it as general as that. I would say that if there was something particularly hot in the upstairs store, or throughout the country, that they would do their level best to get merchandise as close to it as possible in their price lines.

Q. So that perhaps at particular intervals they might see, or not, a particular dress, that they would attempt to get that, but as a general policy it was not the policy of the buyers to continually try to get copies for the basement in the way—I mean, I want the record to be clear in fairness to Mandel Brothers. A. It is hard to define the word “general.” There were many cases where they did.

Q. Specifically purchase copies? A. Specifically attempt to purchase copies, and in the buying of other dresses they undoubtedly bought copies whether they knew they were copies or not.

Q. Well, now, Mr. Wyzanski, do you know what effect upon the value of a better dress was the sale of the copy of that dress in the market to the public? A. No—are we continuing this discussion in the basement?

Q. No.

Mr. Albert: Will you read the question, please?

(Last question read by the reporter.)

The Witness: I am confused by “in the market to the public.”

By Mr. Albert.

Q. Well, we will leave out “in the market to the public.”

A. Read it again.

7744

Henry N. Wyzanski—For Commission—Cross.

(Last question read as follows: "Q. Well, now, Mr. Wyzanski, do you know what effect upon the value of a better dress was the sale of the copy of that dress?")

Q. What, in your opinion, is the effect on the salability of a better dress selling, let us say, for \$29.75 on a copy of that dress being sold for \$16.75?

Mr. Haycraft: That is objected to as irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: He may answer.

The Witness: What did you say, sir?

7745

Examiner Bennett: You may answer if you have any opinion.

The Witness: I could conceive of a dress at \$16.75 being a copy of a \$29.75 dress and hurting the sale of that \$29.75 dress.

By Mr. Albert.

Q. That is, isn't it a little bit more than conceiving that it would hurt? Don't you know from your experience that the sale of a copy of a better dress has definitely and does definitely and will always definitely hurt the salability of that better dress? A. I know definitely that that is not true as you have expressed it—always definitely.

7746

Q. In very rare cases will it not affect the salability of a better dress? Is that not so? A. I know of two cases this spring where our store bought dresses from a man and they were retailed at \$35 and he was a non-Guild man. and there were copies of that dress in stores in Chicago and we continued to sell that dress at \$35 and sell it successfully, because the other manufacturers did not have that something—I don't know what it was—it was the line or the fit or something that made our dress continue to sell at \$35, and we did not take a single reduction right through the summer season.

Q. Well, then— A. (Continuing) I know of a similar case in Marshall Field's.

Q. Would you say that the other two dresses were copies of your \$35.75 dress—whatever price you mentioned? A. Yes, I would say they were copies.

Q. Despite the fact you say they could not compare with your dress, there was something about them that was lacking? A. Yes, but it was the fit, must have been the fit. I cannot conceive of anything else, because they were copies.

Q. Where were these other two dresses sold, do you know?

Mr. Ben J. Altheimer: We would not like, Mr. Examiner— 7748

Examiner Bennett: I do not hear you.

Mr. Ben J. Altheimer: We would not like the witness to testify as to who the buyers were that handled the dresses, who they were, and what competitors handled the dresses, because other people may go there and buy them.

Mr. Albert: May I point out to your Honor exactly what I am getting at? I would like to do it to your Honor personally without revealing the purpose of the examination thus far, because if I do that it will be defeated automatically. I think your Honor will agree with me as to the relevancy of the question and the pertinency of it. 7749

Mr. Haycraft: I think we are way off from the issues in this case, Mr. Examiner.

Examiner Bennett: I beg your pardon?

Mr. Haycraft: I say, I think we are way, way off from the issues in this case.

Examiner Bennett: Yes. Are you objecting?

Mr. Haycraft: Yes, I am objecting—irrelevant and immaterial.

7750

Henry N. Wyzanski—For Commission—Cross.

Examiner Bennett: I will sustain the objection as irrelevant.

Mr. Albert: If your Honor will permit me?

Examiner Bennett: Yes.

By Mr. Albert.

Q. Now, Mr. Wyzanski, can you give us an estimate of the number of styles handled in the basement during 1935?

A. I could not.

Q. Have you any idea whatsoever, a rough estimate? We are not asking for anything specific. A. No. I am sorry.

7751

Q. Can you give us an estimate of the number of styles that you handled in your basement which are copies of Guild merchandise? A. No, I cannot.

Q. Do you know how many different styles you have in your basement to-day? A. No, I do not.

Q. Can you make any estimate of the number of copies of Guild merchandise that you have in your basement store to-day? A. I assume that there are none because we are being shopped.

Q. Aside from that, you don't know? A. Well, I am relying upon the accuracy of Miss Kindler, and also on our buyer, who is instructed not to buy Guild copies.

Q. Have you at any time prior to this hearing prepared any statistics showing the number of styles generally used in your basement? A. No, I never have.

7752

Q. Have you, prior to this time, ever prepared statistics or comparative figures showing the number of copies of Guild merchandise that you have used in your basement? A. No, I never have.

Q. Have you at all investigated or shopped the stock of your so-called competitors in an attempt to determine the number of styles that your competitors generally have on hand? A. Your question reads "total number of styles"?

Q. Yes. A. No, we never have.

Q. Have you ever shopped your competitors to determine the number of copies of Guild merchandise that they have ever had on hand at a particular time? A. I can't say that we have made a survey, but our shoppers have reported off and on from time to time the presence of Guild copies in chain shops.

Q. But as regards the number of those copies you cannot say; is that so? A. I cannot say as regards to number, except that it has been a continuous occurrence.

Q. In so far as you know is it possible that the shopper that shopped your competitor each time reported on the same copy as being present? A. I don't think the life of the average dress would last as long as our shoppings have been over a period of time.

Q. Is there anything in your investigation that might lead you to—

Mr. Albert: Question withdrawn.

By Mr. Albert.

Q. Can you tell us definitely, as a result of your shopping, whether or not a particular competitor had more than one copy of Guild merchandise in stock at any particular time, and if so, the number? A. It is my recollection that they had many Guild copies.

Q. How many would you say, as a result of your shopping investigations? Have you any idea? A. Oh, I have seen reports that stated three or four from time to time.

Q. Three or four in stock at a particular time? A. Styles.

Q. Styles? A. Yes.

Q. Do you know how many styles that particular competitor was showing in addition to these three or four copies of Guild merchandise?

7756

Henry N. Wyzanski—For Commission—Cross.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Mr. Albert: It is most relevant, your Honor.

Examiner Bennett: I will let him answer.

The Witness: I don't know that and I don't know how many additional Guild copies they might have, other than the ones that the girl reported on.

By Mr. Albert.

Q. As a matter of fact—

Mr. Albert: Withdrawn.

7757

By Mr. Albert.

Q. Your opinion, Mr. Wyzanski, that these competitors were selling copies of Guild merchandise is predicated—is this correct?—solely upon the opinion of your shopper who shopped the competitor? Is that so? A. No.

Q. Upon what, in addition to that, do you base your opinion that this particular copy was actually a copy? A. The opinion of the buyer, who is in the market and used to report to me how much she was being hurt, that she saw others selling styles that she saw orders on being shipped to Chicago because I would not let her sell those styles, and complaints that her business was being hurt thereby.

7758

Q. The only information upon which you predicate your belief that copies are being sold by competitors is on the information given you by the shopper in the store and by your buyer who said that she could not buy the merchandise, is that correct? A. No.

Q. Well, what else? A. My own opinion, from what seems to me a common-sense viewpoint, that if Guild dresses are good styles and if a person does not belong to the Guild and they are selling merchandise in the cheap

Henry N. Wyzanski—For Commission—Cross.

7759

price lines and they want to give the customers the best styles that they can, that they would naturally tend toward buying Guild copies. That is my opinion, I say. It may not be so.

Q. So that, in so far as your opinion is concerned, you base it purely upon the assumption that they must have Guild copies in order to sell their dresses?

Mr. Haycraft: That is objected to; not his testimony at all.

Examiner Bennett: He has answered "No," I think, hasn't he?

Mr. Haycraft: I didn't hear it.

7760

By Mr. Albert.

Q. Mr. Wyzanski, have you prepared up to the present time any figures showing the ratio of copies of Guild merchandise in your basement store as compared with other merchandise sold in the basement store? A. No, we have not made such a study.

Q. Have you those figures for any period of time at all? A. No, we have not.

Q. Then your opinion—

Mr. Albert: Withdrawn.

By Mr. Albert.

Q. Then, despite the fact that you have no comparative figures upon which to predicate your belief, it is your opinion that the basement store has been hurt by your inability to obtain copies? A. I do have such comparative figures to this extent, that we know we have sent back fast-selling styles, styles that we were selling in our basement, styles that we would have re-ordered and got potential sales on, and by returning them we must have lost business, because the styles were selling and we did not re-order them.

7761

7762 *Henry N. Wyzanski—For Commission—Cross—Redirect.*

Q. Have you made any concomitant gains in your better departments? A. I tried to answer that question yesterday by saying that we think it is a good thing in our better dresses, but in examining our figures we cannot prove it.

Mr. Albert: That's all.

Redirect examination by Mr. Haycraft.

Q. At the time you held the conferences with Mr. Post and Mr. Mandel, before the signing of the Declaration of Co-operation agreement, Commission's Exhibit 527-A, what was the position that Mr. Post held? A. He was merchandise manager of the ready-to-wear and intimate apparel, Mandel Brothers.

7763

Q: You were asked to testify as to what was said at those conferences, and you started to testify twice and you were interrupted. I will ask you now to testify as to what—

Mr. Albert: I object to the statement of Mr. Haycraft.

Mr. Haycraft: May I complete my question?

Mr. Albert: I am sorry. I thought you had completed it.

Examiner Bennett: Complete it.

Mr. Haycraft: Let the reporter read it as far as I had gone.

(Question read by the reporter.)

7764

By Mr. Haycraft.

Q. (Continuing)—transpired at those meetings as to the policy of Mandel Brothers with respect to the subject matter of the Declaration of Co-operation?

Mr. Albert: Are you through, Mr. Haycraft?

Mr. Haycraft: I am through.

Mr. Albert: If the Court please, I object to the gratuitous inclusion of an irrelevant and unfounded

statement by Mr. Haycraft with respect to the question involved. I also object to the question upon the ground it is improper redirect.

Examiner Bennett: My recollection is that that was gone into on cross-examination. You may answer it yourself, sir, with sufficient accuracy to tell us, if you know the substance of what was said at those conferences.

The Witness: I have a recollection of it; I have a definite recollection, but I cannot swear to it.

By Examiner Bennett.

Q. Give us your best recollection. A. My best recollection is that it was discussed and the feeling was that it was a theory worth experimenting with, and that for this reason and the fact that Mandel Brothers wanted to be able to give its customers the best that the market afforded and be able to go into any resources in the market—for those two reasons, as I recall it, to my best recollection, that is the reason we signed the Declaration of Co-operation.

7766

By Mr. Haycraft.

Q. How many dresses did you actually return to the Harris Company as a result of the advice of the shopper that they were copies?

Mr. Albert: That is objected to, may it please the Court, as improper redirect. The testimony has shown he was eventually permitted to sell them all.

7767

Mr. Haycraft: I am trying to find out how many were actually returned, if he knows.

Examiner Bennett: He may answer. Overruled.

A. Of style 809 we had 700 on order. How many of them came into the store I do not know. But those that

7768 *H. N. Wyzanski—For Commission—Redirect—Recross.*

did come into the store were returned and the remainder of the 700 that did not come into the store were canceled, in addition to which there were 400 other dresses canceled which were not copies, so that our assortment might be kept in proper proportion between one and two-piece styles as I explained yesterday.

By Mr. Haycraft.

Q. As to the other numbers, 813 and 829, those were all canceled; is that right? A. No.

Q. What was the situation with reference to that? A. 813 we were forced to take off sale because it was a copy. 7769 That was the one where we had the ad running for Tuesday, the merchandise came in Monday, we got notification from the Guild it was a copy, so we took it off sale, and we changed our ad from a two-cut ad to a one-cut ad, running a dress that had not been called a copy, thereby depriving us of potential sales on the other one.

Q. How about 829, what did you do about that one? A. I don't recall the details of 829.

Recross-examination by Mr. Albert.

Q. I believe Mr. Haycraft asked you how many of style 809 were returned to Harris; is that correct? A. That is correct. I believe so.

Q. What was your answer? A. My answer was I could 7770 not tell him how many were returned. I did know we had 700 on order, but I did not know how many had come in, but that those that did come in we returned to Harris and canceled the remainder of the order, and in addition 400 other dresses.

Q. Did you return all of the dresses to Harris, or cancel all of the dresses which you had ordered from Harris? A. Of that style.

Henry N. Wyzanski—For Commission—Recross.

7771

Q. Of that particular style? A. 809. And in addition, as I said, other styles that were copies, to make the order balance.

Q. When you specifically refer to style 809, do you mean that that style was one of the styles of which dresses were not sent to Stix, Baer & Fuller?

Mr. Haycraft: That is objected to.

Mr. A. J. Alheimer: We object to it.

Mr. Haycraft: It is not proper recross-examination.

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

7772

Q. Now, Mr. Wyzanski, in so far as Mandel Brothers is concerned, what is their opinion as to the program of the Guild in its attempt to eliminate style piracy? Is it still an experiment?

Mr. Haycraft: That is objected to as not proper recross.

Mr. Albert: May it please the Court, Mr. Haycraft asked the witness questions with regard to what they felt when they signed the Declaration of Co-operation, upon the ground that the witness had been prevented from answering matters with respect thereto on his cross, and therefore he brought it out on his redirect.

Mr. Haycraft: Right up to that time.

Examiner Bennett: What is the question?

(Question read by the reporter.)

Examiner Bennett: I will let him answer. Objection overruled.

7773

A. Yes, we still feel that the experiment is going on and we do not believe that sufficient evidence has been gathered

7774

Henry N. Wyzanski—For Commission—Recross.

as yet to indicate whether it has been successful or unsuccessful.

By Mr. Albert.

Q. Is that in all departments? A. In our better price lines. We feel that in our lower price lines, in our basement, that it has hurt us; but we subscribed to the theory originally as an experiment and we are still going along, trying to find the answer.

Q. What are you trying to find the answer to? A. Whether or not the elimination of style piracy will be a good thing for Mandel Brothers' customers.

7775

Q. In so far as Mandel Brothers is concerned, therefore, there is such a thing as style piracy, and the sole question is as to the possibility of eliminating it? Is that correct?

Mr. Haycraft: That is objected to, going into a matter that was gone into on cross-examination before; mere repetition.

Examiner Bennett: I will sustain the objection to that.

Mr. Albert: That's all.

Mr. Haycraft: Nothing further.

(Witness excused.)

Examiner Bennett: Do you have another witness?

Mr. Haycraft: Yes.

7776

Mr. Likert: May I enter my appearance as attorney for the witness?

Examiner Bennett: Yes. Give it to the reporter, please. What is your name?

Mr. Likert: George H. Likert, Jr., of the firm of Kaumheimer & Kaumheimer, at Milwaukee, Wisconsin.

Examiner Bennett: Are you appearing for the witness?

Henry N. Wyzanski—For Commission—Recross.
 Ralph T. Friedmann—For Commission—Direct.

7777

Mr. Martin: He is appearing for the witness, yes, sir.

Mr. Likert: Yes, sir.

RALPH T. FRIEDMANN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Will you state your name? A. Ralph T. Friedmann.

7778

Q. Now, Mr. Friedmann, where do you live? A. Milwaukee, Wisconsin.

Q. What is your occupation? A. Vice-president of Ed. Schuster & Company, Inc.

Q. How long have you been in the employ of Schusters? A. Some sixteen years.

Q. How long have you been in your present position? A. Three years.

Q. Now, Mr. Friedmann, what position did you hold with Ed. Schuster & Company in the fall of 1932? A. I was treasurer and general merchandise manager.

Q. What was your position in the winter, spring—

Mr. Martin: Strike that out.

7779

By Mr. Martin.

Q. What was your position in the summer of 1933? A. In the summer of 1933 I held the same position, treasurer and general merchandise manager.

Q. In the winter and spring of 1935 what position did you hold? A. Vice-president and assistant general manager.

7780

Ralph T. Friedmann—For Commission—Direct.

Q. What business is Schuster Company engaged in? A. Retail Department Store.

Q. Do they have a ready-to-wear dress department, or departments? A. They do.

Q. What are those departments, do you know? A. They have a women's and misses' department, and a Budget Shop.

Q. Who is in charge of those particular department? A. We have a divisional merchandise manager in charge, with a group of buyers under him.

Q. Do they report to you? A. The buyers report to me —may I have the question please?

7781

(Last question read by the reporter.)

The Witness: Not directly.

By Mr. Martin.

Q. Did they in the years 1932 or 1933? A. Buyers reported to the divisional merchandise manager, the divisional merchandise manager reported through my assistant, to me.

Q. Now, just briefly, what were your duties as Treasurer and general merchandise manager of Schusters in the years 1932 and 1933? A. I was responsible for the merchandising and promotional activities of the business, with a group of divisional merchandise managers reported to me.

7782

Q. Now, what were your duties in 1935 and 1936? A. Executive part of the responsibility of the general management—executive responsibilities of the business.

Q. Now, Mr. Friedmann, have you ever heard of an organization known as the Fashion Originators Guild of America, Incorporated? A. I have.

Q. When did you first hear of it? A. 1932.

Q. Do you recall in what way it was brought to your attention? A. Well, we received a letter, as I remember it, from the Fashion Originators Guild of America.

Ralph T. Friedmann—For Commission—Direct.

7783

Mr. Martin: Mark these papers Commission's Exhibits 532-A to D and 533-A to I.

(Thereupon papers referred to were marked Commission's Exhibit 532-A to D, inclusive and 533-A to I, inclusive for Identification.)

Mr. Albert: You will save some time on the identification if you will let me see that.

By Mr. Martin.

Q. Mr. Friedmann, I hand you Commission's Exhibits 532-A to D for Identification and Commission's Exhibits 533-A to I, and ask, can you identify those papers (indicating)? A. I can.

7784

Q. What is that? A. Letter sent to me by Maurice Rentner, chairman of the Fashion Originators Guild of America.

Q. Under what date? A. Date of December 16, 1932.

Q. What is the next exhibit, the next number? A. 533-A?

Q. Yes. A. That is a—I believe a copy—it is a memorandum attached to it, as nearly as I know.

Q. That is attached to the letter? A. Yes.

(Mr. Martin hands to Mr. Albert paper marked Commission's Exhibits 533-A to D, inclusive.)

Mr. Albert: Have not these gone in before?

Mr. Martin: I think it has.

7785

Mr. Albert: I mean, why put it in again Oh, well.

By Mr. Martin.

Q. Now, is this the letter that you referred to in your testimony a few minutes ago, when you testified that you first heard of the Guild through receiving a letter from

7786

Ralph T. Friedmann—For Commission—Direct.

Mr. Rentner in 1932—is this the letter you referred to (indicating)? A. It is.

Q. Now, after the receipt of that letter, which advised you of the Fashion Originators Guild, did you have any conferences with any of the officers of the Guild? A. I did not.

Q. Are you familiar with any of the other objects, or aims, or activities of the Guild, other than those outlined in Mr. Rentner's letter of December 16th, which is Commission's Exhibit No. 532-A?

7787

Mr. Albert: Objected to, if it please the Court, as not within the complaint of the Commission, and being entirely irrelevant and immaterial.

Mr. Martin: I do not think that needs any argument by me, your Honor.

Examiner Bennett: Well, I will let him answer.

Mr. Albert: We are back in 1932, your Honor.

Mr. Martin: His Honor has ruled on the question.

The Witness: May I have the question read? (Last question read by the reporter.)

Mr. Albert: May I ask that the Commission be asked to fix the time as to what he is speaking of?

Examiner Bennett: Yes, fix the time.

By Mr. Martin.

7788

Q. Since you first became acquainted with the Guild?

Mr. Albert: That is objected to as entirely immaterial and irrelevant, if it please the Court.

Mr. Martin: His Honor has already ruled on that.

Mr. Albert: Well, there was no fixing of time before. We are not interested in what happened back in 1932 or 1933.

Ralph T. Friedmann—For Commission—Direct.

7789

Mr. Martin: No, you are not interested in anything that you do not think is going to help you.

Examiner Bennett: Yes. I will let him answer.

Mr. Keller: I move that that last remark be stricken.

The Witness: May I have the question read, please?

(Last question read by the reporter.)

The Witness: No, I am not.

By Mr. Martin.

Q. Now, did Schuster Company enter into any agreement with the Fashion Originators Guild as a result of this letter of Mr. Friedmann's, this letter of December 16th, 1932 (indicating)? A. We did not. 7790

(Thereupon papers were marked Commission's Exhibits 534-A to D, inclusive, for identification.)

By Mr. Martin.

Q. Mr. Friedmann, I hand you Commission's Exhibits No. 534-A to D, inclusive, for identification, and ask, can you identify that paper (indicating)? A. I can.

Q. What is it? A. It is a letter to me under date of June 19, 1933 from Maurice Rentner, chairman of the Fashion Originators Guild of America, Incorporated.

Q. All right, sir. Now, Mr. Friedmann, have Schusters ever signed a Declaration of Co-operation with the Fashion Originators Guild of America? A. No, sir. We wrote a letter. 7791

Q. Did you enter into an agreement of co-operation and anti-piracy?

Mr. Albert: That is objected, if it please the Court, as calling for a conclusion of the witness. The witness has testified he did not sign the Declaration of Co-operation.

7792

Ralph T. Friedmann—For Commission—Direct

Mr. Martin: All right.

Examiner Bennett: What is the question?

Mr. Martin: That is all right; I will wait for the question. Will you please mark these Commission's Exhibits 535, 536 and 537.

(Thereupon papers referred to were marked Commission's Exhibits 535, 536 and 537 for identification.)

By Mr. Martin.

7793

Q. (Indicating) I hand you Commission's Exhibit 535 for Identification and ask, can you identify that? A. I do.

Q. Sir? A. I do.

Q. What is it? A. A Declaration of Co-operation Anti-Piracy.

Q. (Indicating) I hand you Commission's Exhibit 536 and ask, can you identify that? A. I do.

Q. What is it? A. It is a letter from me to the Foreign Originators Guild of America.

Q. (Indicating) I hand you Commission's Exhibit 537 for Identification and ask, can you identify that? A. I can.

7794

Q. What is it? A. It is an acknowledgment of receipt of my signed Declaration of Co-operation with members of the Guild.

Mr. Albert: May it please the Court, I have no objection to Commission's Exhibits 536 and 537 going into evidence, but I do not see that there is any particular necessity for Commission's Exhibit 535.

Mr. Martin: Now, if your Honor please, I have no objection to Commission's Exhibits 536 and 537 going into evidence.

Examiner Bennett: Received; no objection.

Ralph T. Friedmann—For Commission—Direct.

7795

(The papers referred to, heretofore marked for identification Commission's Exhibits 536 and 537, were received in evidence.)

By Mr. Martin.

Q. Now, Mr. Friedmann, I will ask you is this letter of July 8th from you to the Fashion Originators Guild which is Commission's Exhibit No. 536, the Declaration of Cooperation you signed with the Fashion Originators Guild?
A. It is.

Q. And I ask you if Commission's Exhibit No. 537, is an acknowledgment on the part of the Fashion Originators Guild of the receipt of the Declaration? A. It is.

7796

Q. Now, Mr. Friedmann, I hand you Commission's Exhibit No. 536, which is the Declaration you signed, and Commission's Exhibit No. 535 for Identification, which was the form that the Fashion Guild sent you, and ask you if you will point out if there are any differences between those two papers (indicating)?

Mr. Albert: That is objected to, if it please the Court, the documents speak for themselves.

Examiner Bennett: Are you asking him to point out the difference?

Mr. Martin: I beg your pardon?

Examiner Bennett: Are you asking him to point out the differences which caused him to sign one Declaration?

7797

Mr. Martin: That is right.

Examiner Bennett: And not to sign the other?

Mr. Martin: That is right.

Examiner Bennett: I will let him point out what he regards as the differences.

Mr. Albert: Do you mind if I look over your shoulder?

The Witness: No.

7798

Ralph T. Friedmann—For Commission—Direct.

Examiner Bennett: He may state what he regards as the differences.

By Mr. Martin.

Q. What is the difference between those two statements?

A. I would say that in the second paragraph of the Declaration which says that: "We do not and will not buy for our ready-to-wear departments any copied or pirated dresses of garments created by members of your association."

Mr. Albert: That is Commission's Exhibit 535 you just read from?

7799

Mr. Martin: For Identification.

Mr. Keller: That is a letter of—

The Witness: Our letter of July 8th, 1933, second paragraph stated: "We do not wish to buy, and will not knowingly buy, for our ready-to-wear departments any copied or pirated dresses or garments created by members of your association."

By Mr. Martin.

Q. Am I to understand that the only difference is that in your agreement, as signed by you, you inserted the word "knowingly"? A. Yes, sir.

7800

Mr. Albert: Mr. Martin omits to include that in the Declaration signed by Mr. Friedmann there is also the statement not contained in the general form "we do not wish to buy."

Mr. Martin: I inadvertently overlooked that, Mr. Albert.

Examiner Bennett: Yes.

Mr. Martin: I will put that question again.

By Mr. Martin.

Q. The only thing is that in the agreement as signed by you, Schuster Company, you made the statement that you did not wish to buy and "will not knowingly buy"? A. Yes.

Q. Now, Mr. Friedmann, do you know what was the reason for making that change? A. As I recollect, we felt that we would not be able to determine ourselves whether or not we were buying a copy.

Q. Now, do you know the reason why you signed any Declaration?

Mr. Albert: That is objected to as immaterial, if it please the Court.

7802

Mr. Martin: I think it has a very material bearing.

Examiner Bennett: Overruled; he may answer.

The Witness: May I have the question?

(Last question read by the reporter.)

("Now, do you know the reason why you signed any Declaration?")

By Mr. Martin.

Q. Yes or no. A. Yes.

Q. What were your reasons for signing the Declaration in the form as signed by you? A. I would say there were three reasons—

7803

Mr. Albert: Now, if it please the Court, I object to the witness saying that he would say what the reasons were—

Mr. Martin: Your Honor please—

Mr. Albert: —the question was what the reasons were at that time.

Mr. Martin: I object to counsel for the respondent interrupting the witness in the midst of an an-

7804

Ralph T. Friedmann—For Commission—Direct.

swer to a question. If he wants to object he can wait until the witness goes ahead and answers, but to interrupt him there in the middle of it, is highly improper.

Mr. Albert: We have to wait until the house burns down, your Honor, before putting the hose on it?

Mr. Martin: Right.

Mr. Albert: The witness is obviously not answering the question. I do not see why the record should be cluttered up when it is obviously not an answer to the question.

7805

Mr. Martin: You did not give him a chance, Mr. Albert; he was interrupted before he got started.

Examiner Bennett: He may answer the question.

The Witness: What was the question?

(Last question read and answer as given read.)

Examiner Bennett: Go ahead and enumerate them.

The Witness: Namely, in a letter from Mr. Rentner to us he had stated that all the outstanding lines would be shown in the fall through the Guild; secondly, we wanted access to these lines; and; in the third place, the divisional merchandise manager recommended that we sign that Declaration.

7806

By Mr. Martin.

Q. (Indicating) I hand you Commission's Exhibits for Identification No. 534-A to D and ask you if that is the letter of Mr. Rentner to which you refer in which he advised that lines would be restricted to those who signed the Declaration? A. It is the letter and memorandum.

Q. Did the purposes of the Fashion Originators Guild, as understood by you at the time you signed the Declaration,

Ralph T. Friedmann—For Commission—Direct.

7807

tion, agree with, and were they in accord with the policies and the practices, of E. Schuster and Company, at that time? A. I would say the principles were.

Q. What was your primary motive in signing the Declaration?

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial, irrelevant. He has given us all the reasons, your Honor. We are getting into metaphysics when we start asking the witness as to which reason outweighed another reason.

Examiner Bennett: Well, if you have one, you may answer; overruled.

7808

Mr. Albert: Exception.

The Witness: To make it possible for all my buyers to have access to the showing of the fall lines, which, in accordance with Mr. Rentner's letter to me— May I change that and put it in better English? In view of the fact that—

By Mr. Martin.

Q. See if Commission's Exhibit No. 534-A for Identification in any way refreshes your recollection (indicating)?

Mr. Albert: Now, if it please the Court—

The Witness: Yes, it is in the memorandum—

Mr. Albert: —the witness answered, he had not seemed to need any refreshing of recollection. I do not see why Mr. Martin pushes a letter under the witness' nose and tells him to look at it and give his answer after reading the letter.

7809

The Witness: No, I don't need that, I don't need that.

Mr. Martin: Your Honor please, the witness has a perfect right, without a tirade on the part of

7810

Ralph T. Friedmann—For Commission—Direct,

opposing counsel, to refer to these documents to refresh his recollection, if he so desires.

Mr. Albert: No question about it, your Honor, when he asks for it, and says he needs his recollection refreshed; but when he is answering from memory and seemingly needs no aid to his memory, I object to Mr. Martin sticking the evidence under his nose and telling him to read from it, practically.

Mr. Martin: I object to you setting up yourself as the arbiter as to whether he needs refreshing or not.

7811

Mr. Albert: That is the point to the objection, your Honor. I am not setting myself up as the arbiter. I am just objecting to the practices of Mr. Martin.

Mr. Martin: You certainly are—

Examiner Bennett: All right. Will you read the question? And read the answer so far as it has gone, and let the witness finish his answer.

(Last question and answer read.)

By Mr. Martin.

7812

Q. Go ahead. A. In a memorandum attached to Mr. Rentner's letter of June 19th to Ed. Schuster & Company, he had stated that all the outstanding lines would be shown by Guild houses; we felt it imperative and necessary that we have access to those lines.

Mr. Albert: May I see that a moment, Commission's Exhibit No. 534?

(Witness hands paper to counsel.)

Examiner Bennett: That letter has been used so much I think it should be in the record.

Mr. Albert: It is.

Ralph T. Friedmann—For Commission—Direct.

7813

Mr. Martin: Your Honor please, this same letter, I have no objection to putting it in, and I do not think—

Mr. Albert: If your Honor feels you want this particular letter, I have no objection, but it has been in before.

Examiner Bennett: Yes, all right, then.

Mr. Martin: But this same letter is in the record.

Examiner Bennett: All right.

Mr. Martin: I think two or three times already.

Examiner Bennett: With that statement, of course, that is sufficient.

7814

By Mr. Martin:

Q. Now, Mr. Friedmann, after the date of July 8th, 1933, did you co-operate with the Fashion Originators Guild as indicated in your letter of that date? A. So far as I know, we did.

Mr. Martin: Do you know what exhibit the stamp is?

Mr. Albert: 306. Speak generally about the stamp. I will not—

By Mr. Martin:

Q. Did you, in accordance with your agreement, place a warranty stamp, or cause to be placed the warranty stamp, set out in your letter of July 8th? A. I instructed that it be done.

7815

Q. That it be placed on all orders? A. Yes.

Q. Do you know Mr. Albert Post of the Fashion Originators Guild of America, Mr. Friedmann? A. I do.

Q. Did you have any conversation with Mr. Post either in a personal conference or over the telephone, just prior to March 21st, 1935? A. I did not.

7816

Ralph T. Friedmann--For Commission--Direct.

(Thereupon a paper was marked Commission's Exhibit 538 for Identification.)

By Mr. Martin.

Q. (Indicating) I hand you Commission's Exhibit No. 538 for Identification and ask can you identify that? A. I can.

Q. What is it? A. It is a letter under date of March 21, 1935, from me to Mr. Post.

7817

Mr. Albert: If it please the Court, with respect to Commission's Exhibit No. 538 for Identification, I know we ought to object to it upon the ground that proper foundation has not been laid as to the actual mailing of it. What I do wish to object to is this, your Honor, that undoubtedly there is a reply to that letter, that the respondents had no idea whatever as to who was going to be put on here, that we have not gotten in the Milwaukee correspondence and cannot check upon it.

Mr. Martin: For your information I have a reply and that will be introduced in evidence.

Mr. Albert: Very well, your Honor, subject to the introduction of the reply, I have no objection to the admission of Commission's Exhibit No. 538.

Examiner Bennett: It is received as Commission's Exhibit No. 538.

7818

Mr. Martin: It has not been offered yet.

Examiner Bennett: I understood that it was offered at the time.

Mr. Martin: No, I now offer this in evidence as Commission's Exhibit No. 538.

(The paper referred to, heretofore marked for identification, Commission's Exhibit 538, was received in evidence.)

By Mr. Martin.

Q. Now Mr. Friedmann, I hand you Commission's Exhibit No. 538, for the purpose of refreshing your recollection, and ask did Schusters co-operate with the Guild from the time of signing the declaration on July 8th, 1933, up to the date of that letter (indicating)? A. Although I had given instructions that the stamp be affixed to all orders, evidently these instructions had not been thoroughly carried out in all instances.

Mr. Albert: May I ask that the reporter read the answer?

(Answer read.)

7820

By Mr. Martin.

Q. Was the stamp affixed on all orders—

Mr. Albert: That is objected to, may it please the Court, as having been previously answered.

Mr. Martin: If you will kindly wait until I have finished my question.

Mr. Albert: I am sorry. I thought you had dropped your voice.

By Mr. Martin.

Q. (Continuing) — was the stamp affixed to all orders in all price lines? A. So far as I know, yes. The instructions were so given, so far as I remember. May I add to that, on rush orders also.

7821

Q. Did you receive any reply from Mr. Post to your letter of March 21? A. I believe I did.

Mr. Martin: I will ask this document be marked for identification as Commission's Exhibit 539.

(The document referred to was marked Commission's Exhibit 539 for Identification.)

7822

Ralph T. Friedmann—For Commission—Direct.

Mr. Albert: May I point out to your Honor that we have reached the recess hour?

Examiner Bennett: Yes. We will take a ten-minute recess.

(A short recess was thereupon taken.)

Examiner Bennett: Be in order, please.

By Mr. Martin.

Q. After March 21st, 1935, Mr. Friedmann, did Schuster continue to—do you know whether or not Schuster continued to place the warranty stamp on all orders?

7823

Mr. Albert: That is objected to, may it please the Court. There is no testimony in evidence that prior to that time they placed it on all orders. The question assumes a state of fact not in evidence.

Examiner Bennett: You can cut out the word "continue". Let us not have a controversy about that. We have the record.

By Mr. Martin.

Q. Do you know, Mr. Friedmann, whether, after March 21, 1935, the Guild "warranty stamp" was placed on all orders? A. Instructions were given that it be done.

Q. That it be placed on all orders, regardless of price? Afterwards, I am referring to. A. Instructions were given that the stamp be placed on all orders over \$7.75 wholesale sale.

7824

Q. Over \$7.75 wholesale? A. Yes.

Q. Do you know why that distinction was made at that time?

Mr. Albert: That is objected to, may it please the Court. No foundation has been laid.

Examiner Bennett: He may answer.

By Examiner Bennett.

Q. Do you know? A. Because in our letter to Mr. —

By Mr. Martin.

Q. Just answer "yes" or "no". Do you know why that distinction was made? A. Yes.

Q. Why was the distinction made? A. Because, in our letter to Mr. Post, we stated that we would place the stamp on orders on dresses over \$7.75.

Q. I hand you Commission's exhibit for identification No. 539 and ask you if you can identify that (handing document to the witness)? A. I can.

Q. What is it? A. It is a letter to me from Mr. Post under date of March 23rd, 1935. 7826

Q. Was that received by you in reply to your letter of March 21st, which is Commission's Exhibit 538? A. It was.

(The letter referred to, heretofore marked for identification Commission's Exhibit 539, was received in evidence as Commission's Exhibits 539-A to 539-F, inclusive.)

Examiner Bennett: You may proceed.

By Mr. Martin.

Q. Was Commission's Exhibit No. 539-D enclosed with this letter? 7827

Mr. Albert: It is in evidence, Mr. Martin. We will concede it was sent. Why waste time?

By Mr. Martin.

Q. That was received with this letter? A. It was.

Q. And also this memorandum? A. It was.

Q. Now, Mr. Friedmann, with reference to your letter of March 21, and Mr. Post's reply thereto, under date of

7828

Ralph T. Friedmann—For Commission—Direct.

March 23, Commission's Exhibits 538 and 539, do you know the reason for the limitation to the \$7.75 price line of the Guild stamp? A. I do.

Mr. Albert: That is objected to, may it please the Court, no foundation laid as to the source of his knowledge.

Examiner Bennett: He says he knows. He may answer.

The Witness: A. I do.

By Mr. Martin.

7829

Q. What was that reason?

Examiner Bennett: Overruled. You may answer.

A. I was advised by the merchandise manager in charge of ready-to-wear, and my assistant, who was also active in the Ready-to-Wear Division, that it would be necessary for us to make that \$7.75 price stipulation in order to have free access to both the higher price and the lower price dress markets.

By Mr. Martin.

7830

Q. Do you know whether subsequently to March 21, 1935, the promise which you made to Mr. Post in your letter of March 21, namely, that you would use the stamp and co-operate down to \$7.75, was kept? A. I ordered it so.

Mr. Martin: I will ask that this document be marked for identification Commission's Exhibits 540-A and B.

(The document referred to was marked Commission's Exhibits 540-A and 540-B for Identification.)

Ralph T. Friedmann—For Commission—Direct.

7831

By Mr. Martin.

Q. I hand you Commission's exhibits for identification 540-A and B and ask you can you identify that? A. I can.

Q. What is it? A. It is a letter from Mr. Post, addressed to me, dated July 1, 1935.

Q. Was it received by you? A. It was.

(Mr. Martin handing document to Mr. Albert.)

Mr. Albert: No objection, may it please the Court. We are not certain of it. That is why I make no objection.

Mr. Martin: If your Honor please, I offer in evidence Commission's Exhibits 540-A and B.

7832

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Commission's Exhibits 540-A and 540-B, was received in evidence.)

Mr. Martin: If your Honor please, I will ask this be marked Commission's Exhibits 541-A and B.

(The document referred to was marked Commission's Exhibits 541-A and 541-B for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibits 541-A and B for identification and ask you can you identify that? A. I can.

7833

Q. What is it? A. A letter to me from Mr. Post, under date of November 8, 1935.

Q. Was it received by you? A. It was.

(Mr. Martin handing paper to Mr. Albert.)

Mr. Martin: If your Honor please, it is stipulated between counsel that Commission's Exhibit No. 541-A and B for Identification, being a letter

from Mr. Albert M. Post to Mr. Ralph T. Friedmann, of the Edward Schuster Company, under date of November 8th, 1935, is the same letter which was sent by Mr. Post to all retailers who had signed the declaration of co-operation with the Fashion Originators Guild, and a copy of the same is in evidence.

Mr. Post: As 361-A and B. I will check it.

Mr. Martin: A copy of which is already in evidence as Commission's Exhibit 361-A and B.

Mr. Albert: Commission's 541-A and B is the same as Commission's Exhibit 361-A and B, whatever the date of it.

7835

Mr. Martin: Yes. That's all.

Mr. Albert: No questions.

Mr. Martin: If your Honor please, it is now a quarter past twelve. Mr. Haycraft was to take the next witness, and he is not here at this time, nor is the witness. I would ask that you adjourn at this time, instead of waiting until 12.30, that we adjourn now for lunch, after which Mr. Haycraft will be back, and available.

Examiner Bennett: All right. We will recess at 1.50.

The Witness: Am I excused?

Mr. Martin: You are excused.

(Witness excused.)

7836

Examiner Bennett: Hasn't the witness a subpoena?

Mr. Martin: Yes, sir, but we had expected there would be some cross-examination, consequently we finished earlier than we had planned.

Examiner Bennett: We will recess until 2 o'clock.

(Whereupon, at 12.20 o'clock, P.M., a recess was taken until 2 o'clock, P. M. of the same day.)

AFTERNOON SESSION.

(Hearing resumed at 2:25 o'clock P. M.)

Examiner Bennett: Be in order, please. You may proceed.

Mr. Albert: If your Honor pleases, before we commence this afternoon, I think, in all fairness to the respondents, we should have some indication from the Commission as to how they intend to proceed with their case from this point on.

We are not very near New York. It is necessary for us to get various files. We have attempted to bring as many as we can, and, at the present time, we cannot anticipate, we have not the slightest knowledge, as to who the Commission intends to put on as their witnesses.

7838

As a result, undoubtedly cross-examination will be delayed by reason of the necessity of respondents' attorney after a witness is put on, getting out the correspondence with respect to that particular witness, so that I believe, in fairness, we should at least be told who the Commission expects to put on, in the attempt to save time.

Far more important than that consideration is the following, your Honor: We have noticed here in the corridors since we have been in Chicago, yesterday and to-day, two witnesses who ostensibly are going to be called in Minneapolis. The Commission has indicated that in so far as they are concerned, they expect to take testimony in Chicago here for a few days, then go to Minneapolis, and then come back.

7839

It seems to me if these witnesses can come down from Minneapolis, and are in Chicago here at the present time, it is most unreasonable and unfair to require the respondents, who have to pay their expenses out of their own pockets, and do not get them from the Government, to go

up to Minneapolis and pay the expenses of going up there solely for the purpose of meeting people who are here in Chicago at the present time, and then coming back to Chicago in order to take testimony here.

Either the Commission should continue its hearings in Chicago, and complete them here, and then go up to Minneapolis, if necessary, so that we can leave for New York from Minneapolis, or else put those Minneapolis witnesses on here in Chicago where they are at the present time, and where they have been attending the hearings in Chicago.

7841

I cannot see any purpose whatsoever in our having to go up to Minneapolis to see people there who are here now. I do not think our request is an unreasonable one, and I think we should have some indication from the Commission's attorneys as to what their intentions are in that matter.

Mr. Martin: May I ask, isn't it necessary, in going from Minneapolis to New York, to come through Chicago?

Mr. Post: It is necessary, but it is not necessary to stop in Chicago. I am something of a native.

Mr. Haycraft: I assumed, Mr. Examiner; that counsel for the Commission had some privileges or responsibilities in this case. I do not understand that we have to take orders or directions from counsel for the respondents as to whom we shall call, or where we shall call them.

7842

Mr. Albert: We are not in any way attempting to give any orders to the Commission's attorneys, whatsoever.

Mr. Haycraft: Certainly the methods being used are not conducive to getting anything in that respect. When counsel for respondent tells the Examiner, and, through the Examiner tell counsel for the Commission, why, they should do this, and why they should not do that, it is not going to get him anywhere.

Mr. Albert: It seems to me it is a confession of weakness on the part of Mr. Haycraft if he assumes there is

any threat in what I said. There certainly could be no threat in what I said against the Government of the United States. What I do say is, it seems to me to be most unreasonable to make us go up to Minneapolis, and then make us come back here, when the Minneapolis witness is here; and it certainly seems more unreasonable when the Minneapolis witnesses are in Chicago, to refuse to answer that question.

I may say that no matter how much it costs us, the Government will not get us to discontinue this case because of lack of funds, and if that is the theory Government's counsel are going on, they can put it out of the window immediately. Nor is there any reason whatsoever why, if we have funds to combat them, and will combat them, that those funds should be unnecessarily exhausted. It seems to me there can be no point whatever in going to Minneapolis when those people are in Chicago to-day, especially in the light of the fact that the Government attorney does not wish to tell us who they have in Minneapolis, aside from those they have here to-day.

7844

Mr. Haycraft: With the attitude you are taking now you are not going to get anything. If you would come to me as one attorney to another, instead of going at it this way, there would be no difficulty. We have accommodated you all we possibly could.

Mr. Albert: No.

Mr. Haycraft: The facts will show to the contrary.

7845

Mr. Martin: I think the record will pretty well show what accommodation you have had in the past.

Mr. Albert: May I ask the Court, in the exercise of reasonable discretion, to inquire of the Commission's attorneys the necessity for going to Minneapolis when Minneapolis witnesses are here in Chicago at the present time and the Commission's attorneys refuse arbitrarily to say whether or not they need anybody else in Minneapolis aside from those they have in Chicago to-day?

There are certainly some rights which respondent has. I will state the philosophy of the Commission's attorneys has been to ride rough-shod wherever they can, but I think it should be stopped at this point, in so far as that precious schedule is concerned.

Examiner Bennett: I would be glad to have the Commission's attorneys indicate their reasons for going to Minneapolis, or whether they have additional witnesses there, if it is true that their witnesses are here and might be heard.

Mr. Haycraft: I haven't anything to say on the matter, Mr. Examiner.

7847 Examiner Bennett: Well, don't you think, that you ought, for the record?

Mr. Haycraft: No.

Examiner Bennett: The Examiner is of a different opinion. Have you any other witnesses?

Mr. Haycraft: Beg pardon?

Examiner Bennett: I say, I wish you would answer his question. Have you any other witnesses, other than those who are here in Chicago now, who you want to hear in Minneapolis?

Mr. Haycraft: I must respectfully decline to answer. In the first place, it is an assumption, Mr. Examiner, that I do not think should be made—that is, that there are witnesses present and ready to testify—which is contrary to the fact.

7848 Mr. Albert: I did not say they were ready to testify. I said they were in Chicago and it certainly would be more comfortable for them to stay here a day than to make seven of us go up to Minneapolis, with the attendant expense.

Examiner Bennett: If you will just wait and not interrupt, I do not understand that anything except stubbornness would prevent your making a reasonable statement as to why you want to go to Minneapolis.

Proceedings.

7849

Louis Liberman—For Commission—Direct.

Mr. Haycraft: There are a number of reasons, Mr. Examiner, that I do not mind telling you.

Examiner Bennett: Well, what are they?

Mr. Haycraft: But I certainly feel no responsibility to tell counsel for the respondent.

Examiner Bennett: I want it now for the record, seeing that you have made an issue of it.

Mr. Haycraft: My responsibility, in the first place, is to the chief counsel of the Federal Trade Commission.

Examiner Bennett: Yes, I understand that.

Mr. Haycraft: The chief counsel of the Federal Trade Commission has been consulted and has authorized counsel for the Commission to call witnesses in Minneapolis and to have a hearing in Minneapolis. The names of those witnesses and whom they represent I am not permitted to disclose.

7850

(Discussion outside the record.)

Examiner Bennett: Have you a witness ready?

LOUIS LIBERMAN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

7851

Q. Will you state your name? A. Louis Liberman.

Q. Where do you live, sir? A. 3443 North Shephard Avenue, Milwaukee, Wisconsin.

Q. What is your occupation? A. Merchandise manager of major and minor apparel at the Ed. Schuster & Company stores, Milwaukee, Wisconsin.

Q. How long have you been in that position? A. Thirteen months.

7852

Louis Liberman—For Commission—Direct.

Q. What did you do before that? A. I was idle for a period of six months.

Q. And before that what did you do? A. Apparel merchandise manager of Stix, Baer & Fuller Company, St. Louis, for nearly nine years.

Q. As apparel merchandise manager for Stix, Baer & Fuller, what were your duties? A. To supervise the merchandising, promotion and sales of ready-to-wear.

Q. Garments of what nature? A. Women's and misses' coats, suits, furs, dresses; junior apparel, girls', and sports-wear.

7853

Q. Did you do any buying yourself, or were buyers working under you? A. We had a corps of buyers for all these departments.

Q. What have been your duties since you have been associated with the Schuster Company? A. In the same capacity, merchandising, promoting the sale of apparel.

Q. Do you have buyers working under you now? A. Yes, sir.

Q. How is the business divided, in the Schuster store, as to price lines of merchandise sold? A. Well, any particular department?

Q. Yes, do you have more than one department of womens' dresses? A. In dresses we have three divisions, womens' and misses', and the budget shop.

7854

Q. Now, what price lines do you have in each of those divisions? A. In the budget shop we carry dresses retailing up to—\$5.98; in the women's and misses' regular dress departments we start at \$6.98, upwards.

Q. In both? A. In both women's and misses'.

Q. Are you familiar with the Fashion Originators Guild of America, Incorporated? A. Yes, sir.

Q. When did you first learn of its existence? A. I believe back in 1932.

Q. While you were working for— A. Working for Stix, Baer and Fuller, St. Louis.

Q. What did you learn about it then? A. It was handled more or less through the general merchandise office.

Q. When you came with the Schuster Company, was that concern co-operating with the Fashion Originators Guild? A. To the best of my knowledge.

Q. In what way did the Schuster Company co-operate with the Guild, at the time that you first came with them? A. Endeavoring to carry out the standards of practice that had been established by the F.O.G.A.

Q. Well, what did they do in that respect, anything? A. We had placed the Guild stamp on all orders that were purchased by the buyers in the market, and also through our New York representation.

7856

Mr. Haycraft: Where is that Guild stamp exhibit?

Mr. Albert: He did not use it. He just referred to it. He referred to it from the Declaration of Co-operation.

Mr. Haycraft: It is on here somewhere.

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 536 and ask you whether or not the stamp that you refer to is set forth on that exhibit—the language of the stamp?

A. Yes, sir.

Q. Now, at that time was this stamp placed on all orders, or was there any limitation?

7857

Mr. Albert: May we have the time fixed?

By Mr. Haycraft.

Q. When you came with the—when was it you said you said you went with the Schuster Company? A. On July 31, 1935.

Q. Now, will you answer the question? A. What is the question?

7858

Louis Liberman—For Commission—Direct.

(Last question read by the reporter as follows: "Now, at that time was this stamp placed on all orders, or was there any limitation?")

The Witness: To the best of my knowledge the stamp was placed on all orders by the buyers.

By Mr. Haycraft.

Q. Well, do you know whether or not there were any garments that were returned pursuant to the warranty?

A. I believe there was, yes.

Q. Do you have any recollection of such returns, as to the names of any of the manufacturers, to whom returns were made? A. I believe all such records are on file.

7859

Q. You haven't any recollection? A. No.

Q. Have you had prepared for your use in this proceeding a statement of those returns? A. I have.

(Thereupon a paper was marked Commission's Exhibit 542 for Identification.)

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 542 for Identification and ask you if that is the statement you refer to? A. Such a statement is correct.

Mr. Haycraft: I offer that in evidence, Commission's Exhibit 542.

7860

Mr. Albert: I have no objection to the admission of this exhibit in evidence, your Honor, except to the statement that prefixes it, or, rather, to the second line of the statement that prefixes it, "Because Guild stated dresses were copies." I believe the exhibit should go in with the statement "Returns of dresses to vendors"—above the second statement.

Louis Liberman—For Commission—Direct.

7861

Mr. Haycraft: Mr. Examiner, I will be glad to ask the witness some questions on that, but it would not be relevant to this case.

Mr. Albert: Unless he wishes to concede, your Honor, that they were adjudged copies.

Examiner Bennett: Overruled; received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 542, was received in evidence.)

Mr. Haycraft: The witness has made one statement, Mr. Examiner, that I should like to—contrary to my understanding of the situation—and I should like to be allowed to refresh his recollection.

7862

Mr. Albert: Now, if it please the Court—are you through, Mr. Haycraft: Yes.

Mr. Haycraft: Yes.

Mr. Albert: If it please the Court, again I rise to object to statements by counsel for the Commission, leading the witness in no uncertain terms. I think it is both out of place for Commission's counsel to state that the witness has given evidence that is contrary to his interpretation, or contrary to his knowledge, or contrary to the inferences that have been drawn from the investigation that the Commission has made. The witness has given his testimony with respect to a certain matter, and the Commission cannot—certainly cannot attack the credibility of its own witnesses.

7863

Examiner Bennett: This is not the document signed by this witness. I would think that would be sufficient to change his testimony upon it. I will sustain the objection to that, to your objection.

Mr. Albert: Thank you, your Honor.

7864

*Louis Liberman—For Commission—Direct.**By Mr. Haycraft.*

Q. What was the practice of the Schuster Company in July of 1935 with respect to returning garments to manufacturers under the warranty clause that was stamped on orders?

Mr. Albert: If it please the Court, that is objected to as entirely immaterial. At the same time, the Commission certainly has shown what the practice is with respect to the return of garments that are adjudged copies; it is purely cumulative, and I can see no purpose that can be gained from asking this witness the mechanics of returning dresses.

7865

Examiner Bennett: Overruled; I will let him answer as to that particular form.

(Last question read by the reporter.)

The Witness: Shall I answer, your Honor?

Examiner Bennett: Yes.

The Witness: The practice was that the Guild shoppers that shopped the Schuster stores and made claims on merchandise—or on styles that were on sale—at which time we were so notified that they were copies, we returned the merchandise. This specimen—or this copy you have here—is a direct result of having received instructions and memorandum through the Guild representatives in Milwaukee.

7866

By Mr. Haycraft.

Q. You are referring now to Commission's Exhibit No. 542? A. That is right.

Q. Who was that shopper, do you recall her name? A. I believe in the fall of 1935 there was a shopper there representative of the Guild by the name of Israel; later succeeded by a girl named Horwitz.

Louis Liberman—For Commission—Direct.

7867

Q. Do you have any knowledge as to how often she shopped your store? A. I have not.

Q. Now, when you returned garments to the manufacturers for the reasons stated, did the manufacturers always accept them? A. No, sir.

Q. What was your experience in that respect?

Mr. Albert: Are we referring to the period after July 1, 1935?

Mr. Haycraft: Yes.

The Witness: I can't recall such correspondence; that is on file.

(Thereupon papers were marked Commission's Exhibits 543-A, B and C for identification.)

7868

By Mr. Haycraft.

Q. Are you acquainted with Mr. Albert M. Post, who is executive director of the Fashion Originators Guild of America? A. I am.

Q. When did you first meet Mr. Post? A. I can't recall; a number of years ago.

Q. At the time that you became associated with the Schuster Company, was he in his present position as executive director? A. He was.

Q. Do you recall having had correspondence with him with respect to the activities of the Guild in Milwaukee? A. I had.

Q. (Indicating) I show you Commission's Exhibit No. 543-A to C for identification and ask you if you can identify it as a letter received from Mr. Post?

7869

Mr. Albert: May I see it, your Honor?

Examiner Bennett: The witness has not identified it as yet. Can you identify it (handing paper to witness)?

The Witness: This letter was received by me.

7870

*Louis Liberman—For Commission—Direct.**By Mr. Haycraft.*

Q. From Mr. Post? A. From Mr. Post.

Q. On what date—what date? A. In early September of 1935.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: No objection, your Honor.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification Commission's Exhibits 543-A to C, was received in evidence.)

7871

(Thereupon a paper was marked Commission's Exhibit 544 for Identification.)

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 544 for Identification, and ask you if you can identify that? A. That is a carbon copy of the reply to the letter.

Q. Carbon copy of your reply to Mr. Post's letter dated September 5th, 1935, being Commission's Exhibit No. 543-A to C? A. That's right.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

7872

(The paper referred to, heretofore marked for identification Commission's Exhibit 544, was received in evidence.)

By Mr. Haycraft.

Q. Now, in Commission's Exhibit No. 543-A, a letter from Mr. Post to yourself, reference is made to a Mr. Greenblatt—who is he? A. Mr. Charles Greenblatt was my predecessor at the Ed. Schuster Company store.

Q. This statement is found in the letter: "I am sure you are aware of the situation in St. Louis where practically every store has subscribed. I know that Milwaukee would straighten out very quickly if your store and the Boston store sent their checks." Do you know what Mr. Post was referring to there?

Mr. Albert: I think the letter speaks for itself, if it please the Court; it is obvious that if the rest of the letter was read it would indicate what was meant.

Examiner Bennett: Well, if there is any particular reason to which this refers, I would like to have it. He may answer.

7874

The Witness: May I have the question again?

(Last question read by the reporter.)

The Witness: I believe it was a matter of establishing a local Guild.

By Mr. Haycraft.

Q. Did the Schuster store send in any checks in response to this letter? A. I do not know.

Q. Was there anything done while you were representing the Schuster Company with respect to the formation of a local Guild in Milwaukee? A. No, sir.

Q. At the bottom of page 2 of Mr. Post's letter is a post-script stating the following: "As recently as to-day a Milwaukee store (Hixons, I believe) complained to us about a certain local condition which could be straightened out in no other manner than by using the Guild." Do you know what Mr. Post referred to in the language I just read to you? A. I do not.

7875

Q. There is a green ink notation in the right-hand margin of page 2; do you know in whose handwriting that is? A. I do not.

Mr. Haycraft: Will you concede that is Mr. Post's handwriting?

7876

Louis Liberman—For Commission—Direct.

Mr. Albert: We will concede that that is Mr. Post's handwriting.

By Mr. Haycraft.

Q. Now, Mr. Liberman, directing your attention to Commission's Exhibit No. 542, and the instances with which you are familiar, when the Schuster Company returned dresses to vendors, because the Guild shopper told you they were copies of styles of Guild manufacturers, do you have any opinion as to the effect of that practice or policy upon the business of the Schuster Company? A. Such merchandise taken out of our shops naturally had a bad effect in loss of sales.

7877

Q. In what way? A. That we could not meet competition in the lower price brackets.

Q. Competition of whom? A. Chain stores and specialty shops, also basement departments.

Q. Were you required at any time to return what was known as "hot numbers"?

The Witness: Please, your Honor, I would not know just how to qualify that—and answer as to "hot numbers."

By Mr. Haycraft.

Q. Well, are you familiar with the term "hot number"? A. I have heard it used.

7878

Q. Do you know what it means? A. You mean my interpretation of it?

Q. Yes. A. It may be a style that has particular vogue at the moment.

Q. Well, were you required to make returns of such styles? A. We were.

Mr. Albert: I am sorry, I did not get that, Mr. Liberman—you were not or you were?

Mr. Martin: We were.

The Witness: We were.

(Thereupon a paper was marked Commission's Exhibits 545-A and B for Identification.)

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 545-A and B for Identification and I ask you if you can identify it? A. I received such a letter.

Q. What is the date of it? A. January 13, 1936.

Q. Who is it from? A. Mr. Al Post.

Q. The executive director of the Fashion Originators' Guild of America? A. That is right.

7880

Mr. Haycraft: I offer it in evidence.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The letter referred to was marked Commission's Exhibits 545-A and B; and received in evidence.)

(Thereupon a paper was marked Commission's Exhibit 546 for Identification.)

Mr. Haycraft: Does counsel for the respondent concede that the pen notations in green ink on the first page of this letter are in Mr. Post's handwriting (indicating Commission's Exhibit 545)?

Mr. Albert: Yes, it is.

Mr. Keller: What is the date of that?

7881

Mr. Martin: January 13th, 1936.

The Witness: That is a carbon copy of a letter that I wrote to Mr. Post (referring to Commission's Exhibit 546 for Identification.)

By Mr. Haycraft.

Q. On January 20th, 1936? A. That's right.

7882

Louis Liberman—For Commission—Direct.

Q. And is it in reply to the letter of Mr. Post, Commission's Exhibit No. 545-A and B? A. That's right.

Mr. Haycraft: I offer it in evidence (Exhibit 546).

Mr. Albert: Is that January 13th?

Mr. Haycraft: Yes.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The letter referred to, heretofore marked for identification Commission's Exhibit 546, was received in evidence.)

7883

By Mr. Haycraft.

Q. Mr. Liberman, do you have any independent recollection of the subject-matter of these two letters? A. Pardon?

Q. Do you have an independent recollection of the subject-matter of these two letters? A. I believe they are stated right in the correspondence.

Q. I say, do you have an independent recollection aside from the correspondence, as to what the two letters were about? A. No.

7884

Q. (Indicating) I call your attention to the second paragraph of your letter to Mr. Post dated January 20th, 1936, Commission's Exhibit No. 546, reading as follows: "Relative to the garment involved, wish to state that we were under the impression that anything costing under \$4.75 was not to be considered a copy of higher priced merchandise or would conflict with the F.O.G.A." Does that refresh your recollection?

Mr. Albert: Now, if it please the Court, the witness has stated that he has no independent recollection, and he has stated that the transaction is accurately reflected in the letters.

Now, the letters are the best evidence of what transpired between the Guild and himself, and I do not think there is any information of any kind necessary from the witness. Both letters are most full and concise upon the points involved in the letters. The letters are the best evidence of what they show, and I object to any interrogation with respect to the letters.

Examiner Bennett: He may be interrogated as to his knowledge of that particular thing.—As I understood it, that is what he is doing now, not attempting to contradict what is in the letter.

Mr. Albert: I beg your pardon?

7886

Examiner Bennett: I think it is not the purpose to contradict what is in the letters, but merely to show this witness' knowledge or lack of knowledge of the situation.

Mr. Albert: May I respectfully suggest to your Honor that I agree that it certainly—the question cannot certainly be directed at an attempt to contradict the letters, and that if he is merely asking the witness his recollection in order to substitute the letters, the letter is already in evidence and speaks for itself, and is the best evidence of the contents.

Examiner Bennett: I will overrule the objection, and let him answer.

The Witness: May I have the question?

7887

(Last question read by the reporter.)

The Witness: May I ask your Honor if I can see the letter from Mr. Post, probably I can derive some information from that?

(Mr. Haycraft hands the letter to the witness.)

The Witness: Matter of Gainmore dress—style 616—was a dress purchased through our New York office, through Cavendish, for our budget shop. I believe it cost \$3.75. This letter states—

7888

Louis Liberman—For Commission—Direct.

Mr. Albert: If it please the Court, may I suggest that a mere repetition of what the letter states is not going to be particularly helpful, and will merely clutter up the record?

By Mr. Haycraft.

Q. My question was whether or not the language to which I direct your attention refreshed your recollection as to the subject-matter of the transaction involved therein? A. It is answered in this third paragraph in my reply to Mr. Post.

7889

Q. I will ask you this question now. In the light of the language to which I have directed your attention, was the Guild stamp, warranty stamp, placed on the order placed by the Cavendish Company for this particular garment?

Mr. Albert: If it please the Court, the witness—

The Witness: To the best of my knowledge.

Mr. Albert: The witness has answered.

Examiner Bennett: Is the Guild stamp covered in those letters?

Mr. Haycraft: No.

Examiner Bennett: How?

Mr. Haycraft: No.

Mr. Albert: May I ask that Mr. Haycraft's question and answer be read? At the time I was making my objection I could not get his answer, and I do not know what went into the record.

7890

Examiner Bennett: Yes, you may have it.

Mr. Albert: Will you read it, please, Miss Fisher?

(Question and answer read.)

By Mr. Haycraft.

Q. If that is true, then, why did you object to returning the garments?

Mr. Albert: If it please the Court, is the Commission now attempting to impeach his own witness the same as he did before? He is now attempting to impeach the letter that is now in evidence.

Mr. Haycraft: I have never attempted to impeach anybody, Mr. Examiner.

Mr. Albert: He is now attempting to vary or alter the terms of this letter which is in evidence, and it speaks for itself, and I say that the Commission's attorney should be foreclosed from any further examination on this point.

Mr. Haycraft: I am merely trying to clarify the situation through the witness; perhaps the witness can clarify it and perhaps he cannot, if it please the Court. Candidly, I am puzzled, because I cannot tell why he should object to returning a garment if he put a stamp on it.

7892

Examiner Bennett: What is the question?

Mr. Albert: I think Commission's attorney can very well leave that to the respondents.

Examiner Bennett: What is the pending question?

(Last question read by the reporter.)

Mr. Albert: I press my objection, if the Court please.

Examiner Bennett: He may answer. Overruled.

Mr. Albert: Exception.

7893

The Witness: This particular dress was purchased by the Cavendish office for the Budget Shop, the cost price of which was \$3.75.

In my letter to Mr. Post, I stated there that, to the best of my knowledge, we agreed not to purchase copies of dresses under \$4.75, I believe. It was a new stamp that was offered, all orders had to be stamped.

7894

*Louis Liberman—For Commission—Direct.**By Mr. Haycraft.*

Q. Then, is it your testimony that while you put the stamp on all orders, you did not agree to return garments under \$4.75, is that it? A. That is as I understood.

Mr. Haycraft: I wanted to get it straight. I will ask to have this document marked for identification Commission's Exhibit 547-A, B and C.

(The document referred to was marked Commission's Exhibits 547-A, 547-B and 547-C for identification.)

7895

By Mr. Haycraft.

Q. I show you Commission's Exhibit 547-A to C for Identification and ask you if you can identify that? A. This is a letter received by me under date of January 23rd.

Q. 1936? A. 1936.

Q. From Mr. Post? A. From Mr. Al. M. Post.

Q. In reply to your letter to him of January 20, Commission's Exhibit 546? A. That is right.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: Which is the letter of January 20th?

Mr. Post: That is 546.

Mr. Albert: No objection, if the Court please, except to the pencil notations that appear on that letter.

7896

Examiner Bennett: All right. Commission's Exhibit 547-A, B and C, without the pencil notations, is received.

(The letter referred to, heretofore marked for identification Commission's Exhibits 547-A, B and C, was received in evidence.)

Mr. Haycraft: I will ask this be marked for identification Commission's Exhibit No. 548.

Louis Liberman—For Commission—Direct.

7897

(The document referred to was marked Commission's Exhibit 548 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 548 for Identification, and ask you if you can identify that? A. This telegram was received by me from Albert M. Post.

Mr. Haycraft: I offer the telegram in evidence, dated February 5, 1936.

Mr. Albert: Is 547 January 23rd?

Mr. Post: Yes.

Mr. Albert: No objection.

Examiner Bennett: Received.

7898

(The telegram referred to, heretofore marked for identification Commission's Exhibit 548, was received in evidence.)

By Mr. Haycraft.

Q. Did you reply to this telegram of February 5, 1936?

A. I believe there was an answer.

Q. Did you reply in writing? A. I cannot recall.

Mr. Haycraft: I will ask that this be marked for identification Commission's Exhibit 549.

(The document referred to was marked Commission's Exhibit 549 for Identification.)

7899

By Mr. Haycraft.

Q. When did you first know that the Schuster Store had been red carded? A. At midnight of February 11th.

Q. How did you learn that? A. Why, I happened to get an early morning newspaper of the 12th; such notice was in the "New York Times," Tuesday, February 12th.

Q. Did you see any publication in "Women's Wear"?

A. Of Tuesday, February 12th.

7900

Louis Liberman—For Commission—Direct..

Q. I will ask you to identify the paper I am handing you now, marked Commission's Exhibit 549 for Identification. A. That's right.

Q. What is that I just handed to you? A. The memorandum on the left is a copy of the news item that I saw in the "New York Times." The copy of the right is the article that appeared in "Women's Wear," under date of February 12th, 1936.

Q. Where were you at the time? A. New York City.

Mr. Haycraft: I offer that in evidence, the exhibit which contains both the newspaper statements.

7901

Mr. Albert: May it please the Court, this is objected to, on the ground that it is in no way binding upon the Guild. It is merely a reporter's conception of something that has happened, without any accuracy contained in the article itself.

(The document referred to, heretofore marked for identification Commission's Exhibit 549, was received in evidence.)

By Mr. Haycraft.

Q. What did you do, Mr. Liberman, after you saw this notice in the newspapers, or these notices? A. I notified Ed. Schuster & Company, Milwaukee.

7902

Q. Did you contact the Guild in any way? A. No, sir.

Q. Subsequent to that time, did you have any conversation with Mr. Post? A. I did.

Q. Do you recall when that was? A. I believe it was Tuesday morning, February 11th.

Q. What did you say to Mr. Post, and what did Mr. Post say to you on that occasion? A. I phoned Mr. Post and told him that I was in town. Mr. Post asked me whether or not I was ready to sign up a new declaration of co-operation. I told Mr. Post that I had not the power

Louis Liberman—For Commission—Direct.

7903

attorney to sign any such agreement. Mr. Post then
ed that it would be necessary to take action against
Schuster & Company.

Mr. Albert.

. When was this, Mr. Liberman, please? A. That was
sday, February 11th.

Mr. Haycraft.

. Well, that was before February 12th, not after-
ds, was it not? A. Beg pardon?

Mr. Haycraft: Read the question.

(Question read by the reporter.)

7904

The Witness: That was before February 12th.

Mr. Haycraft.

Did you have any more conversation with him after
had been red called? A. Not any, none whatsoever.

Mr. Albert: May I interrupt for one moment,
if your Honor please? I do not believe I am clear
as to when this conversation with Mr. Post took
place that he was just referring to.

Mr. Albert.

Did that conversation take place on February 11th?
uesday, February 11th, New York City.

7905

Over the phone? A. Yes, sir.

Examiner Bennett: We will take a recess of ten
minutes.

(A short recess was thereupon taken.)

Examiner Bennett: Be in order, please.

The Witness: May it please the Court, I would
like to make a correction in my statement.

Examiner Bennett: All right. Make it.

7906

Louis Liberman—For Commission—Direct.

The Witness: Referring to Exhibit No. 548, this telegram, it occurred to me afterwards that this telegram was turned over to the management of Ed. Schuster & Company, and I believe that they made some decision relative to taking this matter up further with the Guild.

By Mr. Haycraft.

Q. Did you do anything further about it? A. No.

Mr. Albert: May I have that correction repeated?

7907

Examiner Bennett: Read it.
(Answer read by the reporter.)

By Mr. Haycraft.

Q. Did you have any instructions to take the matter up with Mr. Post when you went to New York on February 11th? A. I did.

Q. And what were your instructions at that time? To communicate with Mr. Post, and to advise him that I could not at that time sign any new declaration of cooperation.

Mr. Haycraft: I will ask to have marked for identification Commission's Exhibits 550-A and B.

7908

(The documents referred to were marked Commission's Exhibits 550-A and 550-B for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 550-A and B for Identification, and ask you if you can identify that? A. I have seen this before.

Q. Where? A. In Milwaukee, copy of which I received personally.

Q. And it is a letter from whom to whom? A. A letter from Mr. Al. Post to the firm of Ed. Schuster & Company, Inc.

Q. Under what date? A. Under date of February 11th.

Q. Where were you when you got a copy of it? A. I was in Milwaukee.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The documents referred to, heretofore marked for identification Commission's Exhibits 550-A and 550-B, were received in evidence.)

By Mr. Haycraft.

7910

Q. Upon ascertaining that the Schuster firm had been red carded, what did you do next with respect to the matter? A. I waited for further developments and information from the store.

Q. How long did you wait? A. Until I returned to Milwaukee, at the end of that week.

Q. Did you make any attempt to get any goods from the manufacturer? A. I personally did not.

Q. Did you issue any instructions at that time? A. In answering the question, I would like to make this statement, that I do not believe the dress buyer was in the market at that particular time, but went subsequently.

Q. Did you have any outstanding orders with Guild houses at that time? A. We did.

7911

Q. Do you have an independent recollection with what houses? A. I cannot say offhand.

Mr. Haycraft: I will ask this document be marked for identification Commission's Exhibit 551.

(The document referred to was marked Commission's Exhibit 551 for Identification.)

7912

*Louis Liberman--For Commission--Direct.**By Mr. Haycraft.*

Q. I show you Commission's Exhibit 551 for Identification and ask you what it is, if you can identify it? A. Exhibit C of the Comptroller's office shows the list of vendors, also the outstanding orders with Guild houses, as of February 11, 1936.

Q. Was that prepared pursuant to your request? A. It was.

Q. Did you receive it from your Comptroller? A. I did.

Q. Are you satisfied it is correct? A. I am.

Q. Are you familiar with the names of the resources named on there? A. I am.

7913

Mr. Haycraft: I offer it in evidence.

Mr. Albert: May I ask who Esco is on this, Mr. Haycraft?

The Witness: Ed. Schuster & Company.

Mr. Albert: That is objected to, may it please the Court, upon the ground that no proper foundation has been laid.

Examiner Bennett: Overruled; received.

Mr. Albert: Exception.

(The document referred to, heretofore marked for identification Commission's Exhibit 551, was received in evidence.)

By Mr. Haycraft.

7914

Q. How many buyers do you have? A. In dresses?

Q. In dresses, in these two departments, 57 and 63? A. One buyer.

Q. One buyer? A. Yes, sir.

Q. Who is it? A. At the present time, or at the time of this?

Q. At the time of the red carding? A. Miss Grace Turner.

Louis Liberman—For Commission—Direct.

7915

Q. Did she make any attempt to buy dresses from Guild manufacturers—

Mr. Albert: That is objected to.

By Mr. Haycraft.

Q. (Continuing) —after February 11, 1936?

Mr. Albert: That is objected to.

The Witness: She so reported to me.

Mr. Albert: That is objected to. No foundation laid. May I ask the Court to admonish the witness that, while I am making an objection, the witness should not attempt to answer the question?

7916

Examiner Bennett: Strike out the answer until there is a ruling on it. Now, read the question.

(Question read by the reporter.)

Examiner Bennett: And you object?

Mr. Albert: Yes, your Honor. There is no foundation laid.

Examiner Bennett: Overruled. He may answer.

The Witness: She so reported to me.

By Mr. Haycraft.

Q. What did she report to you? A. That the firms that she had been accustomed to buy merchandise from at the various price levels, she was unable to see the merchandise, or place orders for Ed. Schuster & Company.

7917

Q. Is Miss Turner now with the Shuster Company? A. She is not.

Q. When did she leave? A. About July 14th.

Q. Referring to Commission's Exhibit 551, I notice under the heading "Disposition," certain notations as to cancellation, balance canceled, and so on, with dates. How were those cancellations made? A. After a period of time that the order was due, the orders were automatically canceled by the order department, the outstanding order department.

7918

Louis Liberman—For Commission—Direct.

Q. Does the Schuster Company have a New York office?

A. They are a member of the Cavendish Trading Company.

Q. Where are they located in New York City? A. 1412 Broadway.

Q. Does the Cavendish Trading Company have buyers calling on the dress manufacturers in New York City? A. They have buyers that represent Cavendish Trading Corporation, member stores.

Q. Are there Cavendish buyers representing your store, the Schuster Store? A. There are.

Q. Do you know who they are, or were in February, 1936? A. Miss May Snyder and Wilson Rogers.

7919

Q. Do you know whether or not Miss Snyder or Mr. Rogers made any attempt to look at the line of dresses manufactured by Guild manufacturers; or to purchase dresses from such Guild manufacturers? A. It has been so reported to me.

Q. And what did they report? A. That Ed. Schuster & Company were red carded and could not see the merchandise.

Q. Who could not see the merchandise? A. The buyer for Ed. Schuster Company.

Q. You mean Miss Snyder and Mr. Rogers? A. No, Miss Turner, representing Ed. Schuster & Company.

7920

Q. Did Miss Snyder and Mr. Rogers attempt to look at the lines or purchases dresses from the New York Guild manufacturers on behalf of the Schuster Company? A. I can't answer that.

Q. Has the Schuster Company been able to buy merchandise in any way from Guild manufacturers subsequent to February 11th, 1936? A. They have tried.

Q. Have they been successful? A. No.

Q. Mr. Liberman, do you have an opinion as to the effect upon the business of the Schuster Company of the red carding of that company by the Guild?

Mr. Albert: That is objected to, if it please the Court, as immaterial, and no proper foundation has been laid.

Examiner Bennett: Answer yes or no, whether you have an opinion?

The Witness: It has had.

Mr. Albert: I ask that the answer be stricken as not responsive.

Mr. Haycraft: It may be stricken.

Examiner Bennett: It may be stricken.

By Mr. Haycraft.

Q. I will ask you to answer yes or no as to whether you have an opinion? A. I have an opinion, yes. 7922

Q. Has the effect been good or bad?

Mr. Albert: That is objected to, if it please the Court, no proper foundation has been laid as to the sources of his belief.

Examiner Bennett: He may answer; overruled.

Mr. Albert: Exception.

The Witness: Bad.

By Mr. Haycraft.

Q. In what way? A. It has definitely retarded the display, the sales, and the ways and means of catering to Ed. Schuster and Company's clientele on dresses retailing at \$16.95, and above. 7923

Q. Is that all? A. It has put us in very bad competitive position.

Q. In what way? A. That we have—

Mr. Albert: If it please the Court, I ask that this testimony be stricken out, upon the ground that it is a conclusion of the witness pure and simple, and I believe that the answer to Mr. Haycraft's questions called for the facts.

7924

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Mr. Haycraft: I did not ask for any facts; I asked for his opinion, that is all he is testifying to.

Examiner Bennett: There is a question pending is there not?

(Last two questions and answers read.)

Examiner Bennett: Go ahead; overruled.

Mr. Albert: Exception.

The Witness: We have been unable to secure the merchandise which the Ed. Schuster and Company stores have been accustomed to carry over a period of years at price lines of \$16.95, \$19.95, \$22.75, \$25 and \$29.75.

7925

By Mr. Haycraft.

Q. Are those costs or retail prices? A. Retail prices.

Q. What would be the wholesale range of those prices that you have just given the detail of? A. \$10.75 to \$16.75.

Q. In your opinion, has the red carding had any effect upon the \$7.75 cost price line? A. At the time we were red carded it had.

Q. And was that effect good or bad? A. At that time it was bad.

Q. In what way? A. Many of the resources in that price range had joined the Guild, subsequently had resigned.

7926

Q. Do you have an opinion as to whether or not the red carding of the Schuster Company by the Guild has had any effect upon the prestige of the Schuster Company in Milwaukee?

Examiner Bennett: Have you an opinion, yes or no.

The Witness: I have an opinion, yes.

By Mr. Haycraft.

Q. Has that effect been good or bad? A. Bad.

Q. In what way? A. With reference to securing a type of dress that is only produced by Guild members.

Q. To what class of trade does the Schuster store cater?
A. Among the clientele is a type known as half sizes.

Q. What do you mean by that? A. They are cut on special patterns and known generally in the trade as half sizes resources; dresses that are cut for—on lines that fit women that are either short, tall, stout, or take sizes other than recognized standard sizes in apparel.

Q. Whom were your resources for that type of garment?
A. Among such resources was Antman and Bárt, Anderman and Bob, Harry Frank, Little Brothers, Weinberg and Weinberg, Alper and Barons.

7928

Q. Are these all Guild manufacturers? A. They are.

Q. Were you able to replace these lines of merchandise that you referred to from other manufacturers, subsequent to February, 1936? A. We have not as yet found such resources.

Q. Has that inability on your part had any effect upon the business of Schuster's? A. It has.

Q. What has been the effect? A. Loss of sales volume.

Q. In what price lines? A. Dresses retailing at \$16.95 and above.

Q. What would be the cost line of those? A. \$10.75, \$12.75, \$14.75 and \$16.75.

7929

Q. Have you made any study of the stock of merchandise in the dress departments under your supervision? A. I have.

Q. Have you formed a y opinion as to the effect upon the stocks carried by Schuster and Company? A. I have.

Q. What is your opinion in that respect? A. That it has retarded the sale of merchandise volume—pardon me, I would like to correct that—that it has retarded the sale

7930

Louis Liberman—For Commission—Direct.

of merchandise in the stores and also caused a decrease in sales volume compared with the year previous.

(Thereupon a paper was marked for identification Commission's Exhibit 552.)

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 552 for Identification and ask you if you can identify that? A. I can.

7931

Q. What is it? A. It is a summary of dresses on hand from February 10th to July 6th for the women's and misses' departments at retail price lines of \$16.95, \$19.95, \$22.75, \$25, \$29.75, \$35 and \$39.75, showing stocks on hand at these points compared with the year previous.

Q. That is, from February 10th to July 6th, in the year 1935 and 1936? A. And 1936.

Q. Did you take this exhibit into consideration when you based your opinion which you just now gave? A. I did.

Q. Who prepared this for you? A. Through the Comptroller's office.

Q. Prepared in the usual course of business? A. It was.

Q. Are you satisfied it is correct? A. I am.

Mr. Haycraft: I offer it in evidence.

7932

Mr. Albert: I object to it, if it please the Court, upon the ground that no proper foundation has been laid.

Examiner Bennett: I wish you would get the significance of the stock on hand on the business of the store.

Mr. Haycraft: I will ask the witness to testify as to that.

The Witness: What is the question, please?

By Mr. Haycraft.

Q. What is the significance of the figures contained in this exhibit, Commission's Exhibit No. 552, as to the stock on hand? A. This here memorandum shows that after a period of a couple of weeks after we were red carded, we were unable to get the desirable merchandise to sell at these price lines and that our stocks actually suffered—we did not have entree to such lines as the Schuster Company had been accustomed to handling in their stores, and that we could not find—or that the different reports to me were that she could not find—replacements.

Examiner Bennett: Did that have any effect upon the volume of your sales?

7934

The Witness: We—that is I—felt that it definitely did.

Examiner Bennett: All right, I will overrule the objection; it may be received.

Mr. Albert: Exception.

(The paper referred to, heretofore marked for identification Commission's Exhibit No. 552, was received in evidence.)

By Mr. Haycraft.

Q. Have you made any recent attempt to buy ladies' dresses from Guild manufacturers? A. We have.

Q. How recently? A. I believe during July an order was placed by a Schuster representative.

7935

Q. With whom was this order placed? A. It was placed by our New York representative with the Sheila-Lynn Company.

Q. I hand you Commission's Exhibits for Identification 553-A and B, and ask you if you can identify that? A. This is a letter received by Ed. Schuster & Company relative to an order that had been placed by a representative

7936

Louis Liberman—For Commission—Direct.

of the Cavendish Trading Corporation, representing Ed. Schuster & Company.

Q. What is the date of the letter? A. July 31, 1936.

Q. Who signed it? A. The letter is signed by Myra Horowitz, representing Sheila-Lynn, Inc.

Q. Did you receive that letter? A. It came through the regular course of business, upon my return to New York.

Q. And you also received the paper attached to it? A. That was attached to the memorandum.

Q. To the memorandum, or to the letter? A. To the letter.

7937

Mr. Haycraft: I offer them both in evidence, as Commission's Exhibits 553-A and B.

Mr. Albert: No objection, if the Court please.

Examiner Bennett: Received.

(The documents referred to, heretofore marked for identification Commission's Exhibits 553-A and 553-B, were received in evidence.)

By Mr. Haycraft.

Q. How many buying seasons do you have at your store, buying or selling seasons? A. Two seasons.

Q. What are they? A. Spring and autumn.

Q. When do they begin? A. The spring season, purchasing starts in December. In the fall season, it starts the end of July or the end of June.

7938

Q. Would you say that you are now in your fall season of purchasing? A. That is right.

Q. Have you been able to make any purchases from Guild manufacturers? A. No, sir.

Q. Do you have an opinion as to the effect that that inability is going to have on your purchase of fall merchandise for the Schuster stores? A. I have.

Q. Will you state that opinion?

Mr. Albert: That is objected to, may it please the Court. It is purely conjectural as to what may happen in the future. We haven't any idea of where he may be able to get dresses, or what may happen a week from now, two weeks from now, or two months from now. It is purely prophecy, your Honor.

Mr. Haycraft: On the present status, of course, based on his inability to get merchandise from the Guild.

Mr. Albert: I don't think we can go on the hypothesis that there is going to be a continuation of anything at the present time with respect to the merchandise.

7940

Mr. Haycraft: Read the question back. I think it assumes that.

(Question read by the reporter.)

Examiner Bennett: All right. You may state your opinion.

By Mr. Haycraft.

Q. You may state. A. I feel, as long as Ed. Schuster & Company is red carded, and do not have entree to such lines as I have mentioned, which, among others, would include the International, A-1, Casino, Willet & Snyder, in the half-size and large size dress manufacturers, I definitely feel that we cannot give to our clientele the type of merchandise they have been accustomed to buy in the store. It does not place us in a competitive position to cater to such customers that have come into Ed. Schuster's in years past, or seasons past, to buy the type of merchandise that I have enumerated.

7941

(Whereupon at 4.30 o'clock P. M., August 25, 1936, the hearing in the above-entitled matter was adjourned, to reconvene at 1 o'clock P. M. to-morrow, August 26, 1936.)

7942

Louis Liberman—For Commission—Direct.

Room 1123, New Post Office Building
433 West Van Buren Street,
Chicago, Illinois,
August 26, 1936.

Met, pursuant to adjournment, 1 o'clock P. M., E.S.T.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

7943

Examiner Bennett: You may take the witness stand, Mr. Liberman. Any further interrogation?

Mr. Haycraft: Yes, I have some.

Examiner Bennett: Be in order, please.

LOUIS LIBERMAN thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

Direct examination (continued) by Mr. Haycraft.

7944

Q. Mr. Liberman, yesterday while you were on the witness stand you identified Commission's Exhibit No. 552 as an exhibit showing a summary of dresses on hand February 10th to July 6th, 1935 and 1936, from the six retail price lines, Departments 57 and 63 of the Schuster Company, and stated that—

Mr. Albert (interposing): What page is that?

Mr. Haycraft: 4461.

By Mr. Haycraft.

Q. (Continuing) —and made a certain statement with respect to that exhibit. I will direct your attention to the testimony on that page, and your reply, and the Exam-

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7945

iner's question, and just ask you to read it again so as to familiarize yourself with the contents. A. With reference to the—

Q. Do not read it out loud, just to yourself? A. No, I mean, 552—

Q. Yes, read your answer, and the Examiner's question, and your answer to that. A. (Witness examines record.)

Q. Now, in your answer there you said that it definitely did have an effect upon the volume of your sales; what did you refer to in that answer? A. I referred to one of the major price lines involved in this report.

Q. Which one did you refer to? A. The one at \$16.95.

Q. The retail price line? A. The retail price, \$16.95.

7946

Q. Now, what effect did the conditions of the stocks, and the inability to replace these stocks, have upon the volume of your sales?

Mr. Albert (interposing): In the \$16.95?

Mr. Haycraft: In the \$16.95 line?

The Witness: With the permission of the Court, I would like to read some figures here that have been compiled.

Examiner Bennett: Is that part of your answer?

The Witness: Yes.

Examiner Bennett: All right.

The Witness: In Department 57, women's dresses, February to June, inclusive, for the year 1935, total purchases of our entire stock at \$10.75 was 21.90. In 1936 our percentages to total stock purchased at \$10.75 was 8.67. Our purchases from Guild houses in 1935 at \$10.75 cost was 62.7, or \$6402, against \$463 in 1936, or 13 per cent.

7947

In the misses' department, at \$10.75, our total purchases in 1935 to total stock was 19.30; in 1936, 10.27. Total purchases of \$10.75 from Guild houses in 1935, from February to June, inclusive, was

7948

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\$7294, against \$750 in 1936, or in percentage, 1935 to all purchases at \$10.75 dresses was 84.8, against 17 per cent. for 1935.

By Mr. Haycraft.

Q. 17 per cent. for what? A. 1936—excuse me.

Q. Well, now—

Mr. Albert (interposing): Now, if it please the Court—

By Mr. Haycraft.

7949 Q. (Resumed) —what is your interpretation of these figures? A. Pardon?

Mr. Albert: If it please the Court—

By Mr. Haycraft.

Q. (Resumed) What is your interpretation of these figures that you have given?

Mr. Albert: I ask that the testimony of the witness with respect to the last question be stricken from the record. The witness is reading from a paper not in evidence. He has not used the figures to refresh his recollection. We have not any foundation laid with respect to the accuracy of these figures, and, under the circumstances, if it please the Court, I think that the witness' answer should be stricken out.

7950

I believe that the impression—at least that I got—was that he was going to refer to figures on testimony orally, from them. Now, I believe that the least that should be done is for Mr. Haycraft to follow the accustomed procedure he has followed, and lay a foundation for placing this particular pa-

per in evidence, so that it is open to us, at least, for a question to be examined upon.

Examiner Bennett: The matter did not come up in that way. The witness was answering a question, and, as I understand, he may use any source which he thinks is available as a foundation for his answer. He is taking the responsibility in using that. Of course, that document on cross-examination is available to you for cross-examination.

Mr. Albert: May I respectfully ask, if the Court please, that the document be marked for identification, so that we may know what we are referring to?

Examiner Bennett: Well, I think that is all right, if you want it, but I thought you might identify it—I do not think there will be any trouble about the identity of the document; you will have the witness here available.

Mr. Albert: Thank you, your Honor.

Mr. Haycraft: I think I have a question pending, Mr. Examiner.

Examiner Bennett: All right.

(Last question read by the reporter.)

The Witness: It definitely shows, of the major price lines which we were involved in with the red carding of the Guild; that the \$10.75 cost price line was where we suffered the most.

By Mr. Haycraft.

Q. Now, have you made any study of the purchases made from Guild houses as between 1935 and 1936, of the \$10.75 price line, cost price line, in these two departments—that is, the purchases of garments bought from Guild houses, compared between those two?

Examiner Bennett: He gave figures on that—he just gave figures on that in the last answer, did he not—six thousand?

7954

Louis Liberman—For Commission—Direct.

Mr. Haycraft: That is right.

Examiner Bennett: Seven thousand is another

Mr. Haycraft: That is right. I should say "sales" instead of "purchases." Will you make that change? Well, I will withdraw it and ask another question

By Mr. Haycraft.

Q. Have you made a study of sales, the volume of sales by these two departments, as between 1935 and 1936? A. Two departments?

Q. Women's and misses' dresses? A. I don't quite get that.

7955

Q. In the \$10.75 price line? A. In the \$10.75 price line

Q. Or any price line that handled Guild merchandise?

A. I would again like to refer to some memorandums I have here.

Examiner Bennett: All right.

(Witness refers to paper.)

The Witness: Department 57, women's dresses—

Mr. Albert: Same objection, if the Court please, to the witness reading from any document that is not in evidence.

Examiner Bennett: Yes.

Mr. Keller: No foundation laid.

Examiner Bennett: I will let him answer; the document is available for your cross-examination

7956

By Mr. Haycraft.

Q. Go ahead. A. From February to June, inclusive, 1935, 1936, at \$12.95 retail, we had a drop of 44 per cent in sales. At \$14.95, we had a drop of 0.8 percentage. At \$16.95, we had a drop in sales of 47 per cent. At \$19.95 we had a drop of 5.1 in sales. At \$22.75, we had a drop in sales of 33.7. At \$25, we had an increase of 47.3. At \$29.75, we had an increase of 88 per cent.

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7957

Misses' dresses, Department 63, at retail, \$12.95, we had a drop in sales of 25.9. At \$14.95, we had a drop in sales of 3.44. At \$16.95, we had a drop in sales of 33 per cent. At \$19.95, we had a drop in sales of 24.1. At \$22.75, we had a drop in sales of 28.8. At \$25, we had a drop—or had an increase of 6.4. At \$29.75, we had a drop of 52 per cent.

By Mr. Haycraft.

Q. What explanation do you have for these decreases in certain lines, and increases in other lines, as you have testified?

Mr. Albert: Objected to, may it please the Court; no foundation laid.

7958

By Examiner Bennett.

Q. Have you an explanation for it? A. I have.

Q. Go ahead and give it. A. That in the fall of 1935, in planning for the spring of 1936, we were planning to go out after some better dress business, and in the months of December and January we went into the market to increase our stocks in these price lines, and to also build up possibilities of greater volume in the higher brackets for the coming year. It was decided on, in our buyers' meeting for 1936, in all price lines and all departments of apparel, to go for higher unit sales.

7959

By Mr. Haycraft.

Q. To what figures does this present explanation that you now give refer? A. To the sales for the period covered in this report.

Q. In what price lines? A. From \$16.95 retail to \$29.75.

Q. Why is it that you show a decrease in certain of those lines and an increase in others? A. In the better

7960

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merchandise, that is merchandise retailing at \$25 and above, we had received a fairly representative stock previous to being red carded. The lower price lines, naturally, is merchandise on which you can get much better service in the way of delivery, and it depends a great deal on getting re-orders through on orders on merchandise that has already had customer acceptance.

Mr. Albert: May I ask that the last part of the answer be repeated?

Mr. Haycraft: Read it to him.

(Last part of answer read by the reporter.)

7961 *By Mr. Haycraft.*

Q. Mr. Liberman, can you testify as to the Guild houses from whom the Schuster Company was buying merchandise during the fall of 1935 and the spring of 1936, at the time they were red-carded? A. I can, if I have the list available.

Q. Do you have such a list? A. I have such a list.

Q. Will you refresh your recollection from that list? In doing so, so far as you can, give as much description of the house, of the concern, as you can, as to its type of merchandise? A. Types?

Q. Yes, types. A. In the women's department, I would like to refer to the following vendors: Anderman-Bob Burns, Inc.

7962

Mr. Albert: Can that list be marked for identification? He is again reading from a list.

Examiner Bennett: It will be available, of course. I don't know that we want to fill up the record with that sort of identification. Do you want it identified, Mr. Haycraft?

Mr. Haycraft: I would rather do it just the way it is being done, but if the Examiner rules otherwise, we can identify it.

Examiner Bennett: Well, let's identify it.

(The document referred to was marked Commission's Exhibit 554 for Identification.)

By Mr. Haycraft.

Q. Can you identify Commission's Exhibit 554 for Identification? A. Yes.

Q. What is it? A. It is a memorandum of resources taken from the files of Ed. Schuster & Company on purchases from Guild resources from February to June, inclusive, 1935, and also 1936.

Q. What department? A. Department 57, women's dresses.

7964

Q. What is the source of the information contained therein? A. The source is through the regular course of business, business practice and through the comptroller's office, compiled by direction of the comptroller.

Mr. Albert: May I ask the witness whether he has an additional copy of that with him, so I can follow him?

The Witness: There is no objection?

Examiner Bennett: No, it is all right.

By Mr. Haycraft.

Q. How are you going to testify? A. I will take the original.

7965

Mr. Haycraft: All right. Off the record.

(There was a discussion off the record.)

The Witness: Among the houses I would like to call attention to is Anderman-Bob Burns, Inc., a house that I was informed made exclusively half sizes.

Dresden Dress Co., Inc., also manufacture a similar type of garment under the half size classification.

7966

Louis Liberman—For Commission—Direct.

Harry Frank, a resource for large sizes.
Friedman Dress Company, a resource for women's and large sizes.

A. Goodman & Co., Inc., a resource for half sizes.
LaRue Dresses, Inc., a resource for large sizes.
Lytle Brothers, Inc., a resource for half sizes and large sizes.

C. H. D. Robbins Co., a resource for daytime misses' dresses.

Sam Steinberg & Co., Inc., a resource for sports wear, sports types, misses' dresses.

Star Maid Dresses, Inc., also a resource for misses' tailored and sports type merchandise.

Weinberg-Weinberg & Alpern, a resource for large misses' sizes.

7967

By Mr. Haycraft.

Q. Are you familiar with the Fashion Wear Dress Company? A. I am not entirely familiar with them.

Q. Are you familiar with Ginsburg & Abelson? A. I have heard of them, but I am not familiar with them.

Q. Are you familiar with E. M. Marcus & Company? A. I have heard the name, and know it is a resource for misses' dresses, from which we have purchased dresses.

Q. Are you familiar with the Radiant Dress Company, Inc.? A. Yes, it is a resource for misses' large size dresses.

7968

Q. Of this group that you have identified here as resources, I will ask you to testify as to those of this group that can be replaced by manufacturers of dresses outside the Guild.

Mr. Albert: That is objected to, may it please the Court; no proper foundation laid.

Mr. Haycraft: It is a continuation of the same type of testimony had in the previous record, only a little more in detail.

Louis Liberman—For Commission—Direct.

7969

Examiner Bennett: I prefer to have it on the actual trade; that is the best evidence.

Mr. Haycraft: All right. To make a better foundation for it, I will ask you this:

By Mr. Haycraft.

Q. I will ask you whether or not Schuster Company has attempted to replace any of the manufacturers you have named as sources of supply since the red carding?

A. We so instructed the buyer, that it was in her duty and functions to find such replacements.

Q. Has she been successful in all cases? A. She has reported back to me that she has nothing.

7970

Q. Now, can you testify as to those instances, in the names of those houses you have listed here, that she was not successful in replacing? A. From personal recollection, among the houses that she tried to buy merchandise from and was unsuccessful, I would like to call attention to the following: Anderman-Bob Burns, Inc., Harry Frank, Lytle Brothers, C. H. & D. Robbins Company.

Mr. Albert: Now, may it please the Court, I ask the answer be stricken out as not responsive to the question.

Examiner Bennett: That part of it is evidently not responsive. It may be stricken.

Mr. Haycraft: I think I can ask a question which will straighten it out.

7971

By Mr. Haycraft.

Q. Did you issue instructions for the buyer to replace the merchandise which you were purchasing from and had been purchasing from those companies which you have named? A. I did.

Q. With what result? A. That we did not receive at any time during the period covered a representative line of merchandise to replace the vendors mentioned.

7972

Louis Liberman—For Commission—Direct.

Q. Are you familiar with the situation with respect to the other resources that you have named? A. I am not entirely.

Q. By that you mean you do not know whether the buyer was able to replace their merchandise or not? A. No, I don't.

Q. Is that what you mean? A. That is right.

Q. I ask you to give the same information with respect to the resources of your misses' department, Department No. 63.

Mr. Haycraft: I ask that this be marked Commission's Exhibit 555-A and B for Identification.

7973

(The documents referred to were marked Commission's Exhibits 555-A and B for Identification.)

By Mr. Haycraft.

Q. Do you identify the paper handed you? A. Yes, I do.

Q. What is the number on it? A. 555-A and B.

Q. What is it? A. It is a memorandum or list of firms whose sales to Ed. Schuster & Co., Inc., during February to June, inclusive, 1935 and 1936, were included as purchases from Guild houses for Department 63, identified as misses' dresses.

Q. Was this prepared from the same source as the other?

7974

A. It was.

Mr. Haycraft: I will offer this in evidence as Commission's Exhibit 555-A and B.

Examiner Bennett: Any objection?

Mr. Albert: Objected to, may it please the Court, no proper foundation has been laid.

Examiner Bennett: Overruled. Received.

(The documents referred to, heretofore marked for identification Commission's Exhibits 555-A and 555-B, were received in evidence.)

By Mr. Haycraft.

Q. Now, I will ask you whether or not you are personally familiar with all the firms named on these exhibits? A. I am not.

Q. I notice there are certain pencil marks after the names of a number of firms in this exhibit. Did you place them on there? A. I did.

Q. And what did they signify? A. Some of the outstanding resources from whom purchases were made during the time specified.

Q. And you are familiar with them yourself? A. With some of them.

Q. Perhaps you had better testify, then, of the list of names contained in Commission's Exhibit 553-A and B, will you testify as to those concerns with which you are familiar as resources for the Schuster Company, giving a brief description of what you understand them to be? A. Arwon Dress Co., Inc., daytime dresses for misses. Fred A. Block, ensemble dressy type garments. Casino Dresses, Inc., daytime street-wear type. Cecile Dance Frocks, Inc., formal wear. 7976

Q. May I interrupt? I notice that on the exhibit there are certain marks on the left-hand margin in pencil. Did you place those on there? A. I believe I was advised that such firms had resigned from the Guild.

Q. Is Cecile Dance Frocks one of such firms? A. I think it is.

Q. All right. Go ahead. A. Elvia Dress Co., Inc., a popular price line of dresses. The same applies to M. & S. Extract. F. E. D. Dress Company, Inc., an outstanding line of daytime dresses. International Dress Company, Inc., daytime frocks. Lee Claire Costumes, Inc., formal type dress. Lipman Brothers, a daytime street type of ensemble dresses. 7977

Marie-Lynn Dance Frocks, Inc., formal wear. Parisian Manufacturing Company, Inc., daytime dresses. C. H. D.

7978

Louis Liberman—For Commission—Direct.

Robbins Company, daytime frocks. Schultze-Zuch Company, Inc., formal dresses and gowns. Star Maid Dresses, Inc., tailored and sports type dresses.

Sam Steinberg & Company, Inc., tailored and sports type dresses. Topaz Frocks, Inc., popular price daytime dresses. David S. Westheim Corporation, daytime dresses. Zobin-Mayer, Inc., daytime dresses. Phil Zahn & Co., Inc., daytime frocks.

Q. Out of this list of manufacturers that you have named here, will you testify now as to those that you understand have resigned or gotten out of the Guild since February 11, 1936? A. I would like to ask permission of the Court, that whatever statement I would make would have to be only from hearsay.

7979

Q. Well, testify as to what you understand. A. Lipman Brothers, Schultze-Zuch Company, Incorporated, Stern & Goldberg, Inc., Topaz Frocks, Wein Frocks, Philip Zahn & Co., Inc., Elvia Dress Co., Inc., M. & S. Extract, Gracette Dress Company, Inc.

Q. Then, is it your testimony that you have access to those houses as resources at the present time? A. To the best of my knowledge.

Q. That is, the last list that you have just given? A. Yes.

7980

Q. I would like to have you testify as to which of this list of manufacturers that are now members of the Guild, whose merchandise you have not been able to replace from non-Guild houses. A. Not having shopped the market, I could not answer that question.

Q. What about the reports of your buyers in that connection? A. Among the resources I feel definitely we have not been able to replace has been the Aywon Dress Company, Bender & Hamburger, Incorporated, International Dress Company, Inc., Parisian Manufacturing Company, Inc., Parnis-Levinson, Inc., Star Maid Dresses, Inc., Sam Steinberg & Company, Inc., David S. Westheim Corporation.

Louis Liberman—For Commission—Direct—Cross.

7981

Q. I will ask you whether or not you took into consideration the information that you have just now testified to with respect to the resources in giving your opinion on yesterday as to the effect upon the Schuster Company of the red carding? A. I didn't get that.

Mr. Haycraft: Read it.

(Question read by the reporter.)

The Witness: It was on such list that I formed my opinion yesterday.

Mr. Haycraft: That's all, Mr. Examiner.

Cross-examination by Mr. Albert.

7982

Q. What is the number of your budget department, Mr. Liberman? A. The classification for that in our records is 61.

Q. And the misses' is 63? A. Correct.

Q. And the women's? A. Department 57.

Q. When you took over these three departments, Mr. Liberman, what were your duties with respect to them? A. To merchandise, to manage and promote sales in these departments.

Q. And, in line with those duties, is it fair to say that it was your obligation to watch the volume of your stock, the turnover, your mark-ups, your mark-downs, and things of that nature? A. It was.

Q. And, without stretching your modesty, I suppose when you associated yourself with Schuster Stores, and took over these departments, it was your intention and desire to improve upon your predecessor, isn't that so, as regards the record that he made? A. That is correct.

7983

Q. Mr. Greenblatt is no longer with the store? A. That is true.

Q. Have you any idea as to the reasons why he was replaced? A. I have not.

7984

Louis Liberman—For Commission—Cross.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Albert: May I have Commission's Exhibit 543, please?

By Mr. Albert.

Q. Now, Mr. Liberman, you recall that you were questioned with respect to a letter written you by Mr. Post, dated September 5, 1935, being Commission's Exhibit No. 543, A, B and C (indicating)? A. I received the letter.

Q. Now, do you recall that Mr. Haycraft asked you what it was that Mr. Post was referring to in that letter? A. May I have the question, please?

(Question read by the reporter.)

The Witness: I would have to have that memorandum or testimony.

By Mr. Albert.

Q. Mr. Haycraft asked you this question: "Q.—this statement is found in a letter, and then he quotes from the letter: "I am sure you are aware of the situation in St. Louis where practically every store has subscribed. I know that Milwaukee would straighten out very quickly if your store and the Boston store sent their checks." Do you know what Mr. Post was referring to there? A. I believe I have made a reply to that.

7986

Q. Do you recall what your reply was? A. That it was with reference to starting a movement for a local Guild.

Q. Now, will you please examine Commission's Exhibit No. 543-A, and point out to me in that letter what you believe to be has reference to any request by Mr. Post for the establishment of a local Guild? A. I took it from the second paragraph—that is the meaning of the second paragraph.

Q. Is that the only paragraph in the letter that you think refers to the question of the establishment of a local Guild? A. That was my supposition from that paragraph.

Q. Now, let me ask you this—and I am quoting from that paragraph: "At that meeting we understood that the stores agreed to support the cost of a local shopper, by making subscriptions to the Guild." Is that what you say refers to establishment of a local guild? A. That is correct.

Q. Do you know what a local shopper is? A. A local shopper is some—is an individual selected and obtained by the—that is a shopper that is—well, now, your Honor, I would request that the question be simplified, whether a store shopper or an F.O.G.A. shopper.

7988

Q. What did you believe Mr. Post was referring to when he used the words "local shopper"? A. A Guild shopper.

Q. What do you know, or, what is your opinion, as to the duties of a local shopper, who is employed by the Guild? A. Not having been present at the meeting that was held by the Milwaukee retailers, I am not familiar with that situation, and cannot—I am not qualified to give an answer.

Q. Have you never come in contact with the local Guild shopper? A. I have.

Q. What do you understand to be the function of the local Guild shopper? A. The local Guild shopper makes the rounds of the various stores—to some of the stores as I understand it—and goes through stocks and selects such merchandise as she feels, or has received reports on, are copies of Guild merchandise.

7989

Q. Did you know those to be the duties of the local shopper, on September 5, 1935? A. I presume that's what her duties were.

Q. I asked, did you know that those were her duties when you received this letter, dated September 5, 1935?

7990

Louis Liberman—For Commission—Cross.

Mr. Haycraft: I object to that question. The witness has testified to what he thought—

Mr. Albert: The answer was not responsive.

Mr. Haycraft: —and understood—

Mr. Albert: The answer was not responsive, your Honor.

Mr. Haycraft: What he thought, he did not say he knew.

Examiner Bennett: Do you know, or did you know?

The Witness: Would you mind repeating the question, please?

(Last two questions and answers read.)

The Witness: I took it for granted that it was

7991

By Mr. Albert.

Q. Well, then, is it not a matter of fact, that all that this letter referred to and suggests is a contribution to the support of that local shopper? A. I am unfamiliar with any circumstances or any meetings prior to having received this letter regarding contribution to the expense of maintaining a local shopper.

Q. Well, then, how can you testify that this letter referred to the establishment of a local Guild? A. I presumed that from the tone of that paragraph.

7992

Q. Now, this paragraph refers to nothing else except the desire of the Guild to secure the support of a local retailer and the support in maintaining the local shopper, is that not so?

Mr. Haycraft: I suggest that the witness be allowed to read the paragraph.

Mr. Albert: I will let him read it all he wants to.

Mr. Haycraft: And indicate what he had in mind.

(Mr. Albert hands paper to witness.)

The Witness: I again state that I do not know what the respondents' attorney has in mind, only the fact that—of being—to use the initial movement for establishing a Guild and to support this—or by contributing to the support of such Guild through local sources.

Mr. Albert: May I have the answer read?
(Last answer read by the reporter.)

By Mr. Albert.

Q. Did I understand you to say—and if I am making a mistake, correct me—that prior to the receipt of this letter you were not familiar with the matters contained and referred to in this letter— A. Absolutely not.

7994

Q. —as regards to the establishment of a local Guild or a local shopper? A. Absolutely not.

Q. Had no knowledge of it whatsoever? A. None whatsoever.

Q. Were you ever present prior to September 5, 1935, at any conferences or meetings or gatherings which were addressed by Mr. Post? A. I was not.

Mr. Haycraft: Where? That is too indefinite, Mr. Examiner.

Mr. Albert: I do not think that Mr. Haycraft wants me to ask him every city in the United States when he says he was not present at any.

Mr. Haycraft: Unless it refers to Milwaukee, I object to it. That is the reason I am—trying to make it conform to proper cross-examination.

7995

Mr. Albert: As a matter of fact—

Mr. Haycraft: —Milwaukee or St. Louis, one or the other.

By Mr. Albert.

Q. Now, as a matter of fact, Mr. Liberman, were you not present at a meeting addressed by Mr. Post in St. Louis? A. I was not.

7996

Louis Liberman—For Commission—Cross.

Q. I call to your attention the following statement in a letter addressed to you by Mr. Post: "At the time of my last western trip we held a meeting in Milwaukee similar to the one you attended in St. Louis"—

The Witness: If I may, your Honor, refresh Mr. Post's memory, to the fact that I was invited to a luncheon and I was not employed at the time specified, by any concern?

By Mr. Albert.

Q: But you were present at such a meeting, were you?
A. I was not.

7997

Q. Well, are you attempting to distinguish the fact that you were not present by the fact that you were not employed by Schurster & Company at the time that you attended such meeting? A. I was not employed at all, and that I did not attend this meeting, and I was invited in at a social luncheon.

Q. Yes? A. And that's all.

Q. Were you present at that luncheon? A. I was present at that luncheon which was given by friends in St. Louis, had nothing to do with F.O.G.A.

Q. Who was present? A. Mr. Roy Lockhart.

Q. Of where? A. St. Louis.

Q. What store? A. Now he has his own shop.

Q. What store did he have then? A. I believe he had just opened his own shop.

7998

Q. At that time? A. As far as—or slightly—just before.

Q. All right. Who else was present? A. Mr. Herman Hirsch.

Q. What store? A. Stix, Baer and Fuller Company, Mr. Irwin Soger, Kline's Incorporated, Mr. Post and Mr. Golby.

Q. Mr. Golby of the Fashion Originators Guild? A. That's right, and myself, to the best of my recollection.

Q. Do you recall what the purpose was for that luncheon gathering of these representatives of retail stores? A. I do not.

Q. Do you recall what discussion was had at the meeting? A. I do not.

Q. Do you state—is it your testimony—that at that meeting attended by these representatives of retail stores in the St. Louis District, attended by Mr. Golby of the Fashion Originators Guild, and by Mr. Post of the Fashion Originators Guild, that none of the problems or policies of the Fashion Originators Guild were discussed? A. I do not, and I was not present as representing any firm who were at that time interested in any of the problems of the local merchants with the F.O.G.A.

8000

Q. I am willing to concede that you were not interested in them, Mr. Liberman, but I am asking you as to the fact of what was discussed, and as a man present whether or not you had heard it and paid attention to it? A. I was not. I was there merely as a social guest.

Q. And you paid— A. It was not an official meeting, and I was there at the invitation of one of the men present.

Q. You paid no attention to what was said? A. I was not interested.

Q. Aside from whether or not you were interested in what was said, did you pay attention to what was said? A. I did not.

Q. Were you present at the table while the discussion was going on? A. I didn't know there was a discussion going on.

8001

Q. Well, what did the men talk about? A. I don't know.

Q. You have no recollection whatsoever? A. None whatsoever.

Q. Do you recall when this meeting was held? A. I do not.

8002

Louis Liberman—For Commission—Cross.

Q. Well now, in order that there can be no question about the matter, Mr. Liberman, I ask the indulgence of the Court for possibly repeating this question: Is the only matter contained in Commission's Exhibit No. 543-A upon which you predicate your belief that this letter concerned the establishment of a local Guild, contained in the second paragraph of the letter? (Counsel hands paper to witness.)

Mr. Haycraft: I think that has been answered, Mr. Examiner, I object to it.

8003

Mr. Albert: I am willing to concede that, your Honor. I just want to make absolutely certain that I understand the witness' testimony, and it will not take very long for him to answer.

Examiner Bennett: All right, go ahead and answer.

Mr. Haycraft: Read it carefully.

Examiner Bennett: Read the question.
(Last question read by the reporter.)

By Mr. Albert.

Q. Is that correct, Mr. Liberman? A. Yes.

Mr. Albert: Very well.

By Mr. Albert.

8004

Q. Now, Mr. Liberman, did you see Commission's Exhibit No. 548, being the telegram to you from Mr. Post, upon its arrival at the store? A. I did.

Q. And you received it? A. I did.

Q. And you turned it over to whom? A. I turned it over to the Board of Managers.

Q. Do you know what action was taken with respect to this telegram, their answer? A. I do not.

Q. When did you leave for New York prior to the time when you stated you were in New York about February

11th, or February 12th? A. I left Milwaukee Sunday, February 10th.

Q. And from February 5th to February 10th you did not know what your Board of Governors—was it, you said? A. Board of Management.

Q. —Board of Management had done with respect to the telegram, Commission's Exhibit No. 548? A. It was handled—I believe that the Board of Management turned this telegram over to the General Merchandise Manager, who left immediately after that for New York.

Q. Do you know what the General Merchandise Manager did with regard to it? A. I do not.

Q. Did you receive any reports on it? Prior to the time that you arrived in New York? A. I did not.

Q. Who is the General Merchandise Manager? A. Milton Blank.

Q. Do you know whether or not he went up to see Mr. Post in response to this telegram? A. I do not.

Q. Did you come in to New York on that occasion for the purpose of seeing Mr. Post with respect to the contents of this telegram? A. Well, I don't get the question, whether you refer at the time that—that the Board of Management had received this telegram, or later?

Q. Now, you received this telegram February 5th, is that not correct? A. That is right.

Q. And you left for New York on February 10th? A. Yes.

Q. Were you coming into New York for the purpose of discussing this telegram with Mr. Post? A. It was one of the things that I hoped to take up with Mr. Post after I got to New York.

Q. When did you take that up with him? A. On Tuesday, February 11th.

Q. Now, Mr. Liberman, are you not a bit confused about your dates, when you said— A. Well, if you can find any discrepancies I would like to have you so state.

8008

Louis Liberman—For Commission—Cross.

Q. I mean, you have referred, I believe, to Tuesday as February 12th, and also to Tuesday as February 11th?

A. Tuesday—

Q. I mean, in that respect, are you not a bit confused?

A. February 11th?

Q. And you spoke with Mr. Post? A. Mr. Post.

Q. On February 11th? A. On Tuesday, February 11th, if that is the correct date.

Q. Well, so that we have no side discrepancies— A. No.

Q. —I suggest that you forget whether it was Tuesday or Wednesday, and just refer to February 11th? A. Well, it was very pertinent that I remember that date.

Q. It is? A. Yes.

8009

Q. Why is it pertinent that you remember it? A. Because being about eight and a half hours late getting into Chicago from Milwaukee, and missing train connections.

Q. But, nevertheless, you referred to Tuesday as February 12th, and to Tuesday as February 11th. A. If I made an error, I am willing to acknowledge it.

Q. All right. Now, the calendar reveals that Tuesday was February 11th. A. Right.

Mr. Haycraft: Monday, February 10th, and Sunday, February 9th.

Mr. Albert: Right.

The Witness: I am sorry.

8010

By Mr. Albert.

Q. When did you first meet with Mr. Post? A. Regarding this matter?

Q. Yes. A. Being red carded? On Tuesday, February 11th.

Q. That was during the morning? A. The morning of February 11th.

Q. What was the conversation that you had with him? A. I believe I have answered that question yesterday; it is in the testimony.

Q. Would you be good enough to tell me in a little more detail? A. I think the details are the telegram memorandum. I would like to refresh my memory regarding it. I believe it stated the fact that I called Mr. Post and told him I was in town, and, further, stated that he was anxious to know whether or not I had—was prepared to sign a new Declaration of Co-operation of the F.O.G.A. The sum and substance was that I told Mr. Post that I did not have a power of attorney to make any agreements or sign any new contracts.

Q. What did he say in response to that? A. Then he stated the fact, if I remember correctly, that he had given us sufficient time in which to think this thing over, and demanded that we give him an immediate answer, and if so notify the firm.

Q. Did not you understand, Mr. Liberman, by Mr. Post's remarks to you at that time, that the Declaration of Co-operation that had been previously signed by Schuster and Company was going to be withdrawn immediately? A. Well, I believe I stated that in my previous question.

Q. So that if you have not stated it specifically, you wish that inference to be drawn from what you stated? A. That is right.

Q. Then, as a matter of fact, on the morning of February 11th, 1936, you knew that Schuster and Company was to be red carded, did you? A. I had not received official notice.

Q. But you were pretty certain of it, were you not? A. Not necessarily. 8013

Q. Have you not just testified that Mr. Post told you that in as much as the matter had been dragging on to this time, you were going to have your Declaration of Co-operation sent back? A. I do not consider that a telephone conversation is binding or has it any—or is it relevant to the question—the action taken afterwards.

8014

Louis Liberman—For Commission—Cross.

Q. So that when you saw in "Womens' Wear" that the Declaration of Co-operation of Schuster & Company had been returned, were you shocked and completely surprised by it? A. It is pretty hard to say just how I felt.

Q. You expected it, did you not? A. I expected it, yes.

By Mr. Albert.

Q. Mr. Liberman, you testified that Schuster & Company was a member of the Cavendish Trading Corporation? A. Right.

Q. Or—is that the correct name? A. Yes.

Q. How many stores are there in that group? A. Not being positive, I would like to ask a question of our Comptroller, who is present.

8015

Mr. Haycraft: I object to that.

Mr. Albert: Certainly.

Mr. Haycraft: The witness does not know.

Examiner Bennett: If you do not know, well say so.

The Witness: I don't know.

By Mr. Albert.

Q. Would you say that there are approximately twenty stores in the group?

Mr. Haycraft: I object to it.

The Witness: I don't believe it.

8016

Mr. Haycraft: He says he does not know. I object to any further interrogation; not relevant to the issues in this case.

By Mr. Albert:

Q. Is Stern Brothers a member? A. They are.

Q. Is Frederick Loeser a member? A. They are.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Louis Liberman—For Commission—Cross.

8017

Mr. Albert: Laying a foundation, your Honor, for another question.

Examiner Bennett: I will let him answer. Go ahead.

By Mr. Albert.

Q. Was Scruggs Vandervort and Barney a member? A. They are.

Q. Is Harris Drygoods a member? A. They are.

Q. Is Berdyne's a member? A. They are.

Q. Is Ivy a member? A. Pardon?

Q. Is Ivy a member? A. J. C. Ivy, is it?

Q. Yes. A. Yes, they are a member.

8018

Q. Mr. Liberman, have you any objections if I ask your Comptroller how many stores there are in the trading corporation?

Mr. Haycraft: I object to it.

Mr. Albert: Your Honor, it seems to me a very simple point, that certainly the witness can ask the Comptroller, who is in the store—

Examiner Bennett: I will let the witness inform himself through his Comptroller if he relies on that.

Mr. Albert: Yes, your Honor.

Examiner Bennett: You may ask the Comptroller, Mr. Liberman.

The Witness: I would like to ask Mr. Kuechenmeister the number of stores.

8019

Mr. Kuechenmeister: Thirteen stores.

The Witness: Thirteen stores members of the Cavendish Trading Corporation.

Mr. Haycraft: I move to strike out all of the testimony of the witness upon this point, up to this point, as to the membership of the Cavendish Trading Corporation.

Examiner Bennett: I will see—

8020

*Louis Liberman—For Commission—Cross.**By Mr. Albert.*

Q. The Cavendish Trading Corporation is a co-operative organization, is it not? A. To the best of my knowledge.

Q. Do you know how many members of the Cavendish Trading Corporation signed the Declaration of Co-operation? A. I do not.

Q. With the Fashion Originators Guild? A. I do not know.

Q. (Indicating) I show you Commission's Exhibit No. 542, which is headed "Returns of Dresses to Vendors, because Guild stated dresses were copies." What do you mean by "Guild stated dresses were copies"? A. A representative of the Guild came into our stocks and selected some dresses claiming that they were copies of Guild Fashions, and being a co-operative member we selected such dresses that were in our stocks and returned them to vendors.

8021

Q. Do you know upon what basis these dresses were declared to be copies? A. Only through the representative of the F.O.G.A.

Q. Have you any knowledge as to the methods by which dresses are adjudged to be copies? A. I am not entirely clear what the procedure is, no. I am not aware of the method or machinery that was used to select the merchandise.

8022

Q. And since you are not aware of the methods, and since you sent back copies of which you were informed by the Guild shopper, is it fair to say that you have full faith and confidence in the information given you that the dresses requested to be returned were copies?

Mr. Haycraft: Objected to as irrelevant and immaterial; no foundation laid here.

Examiner Bennett: I will let him answer.

The Witness: Whatever procedure, or whatever action was taken concerning these dresses was all

done through the buyer, which I was not familiar with the particular circumstances.

By Mr. Albert.

Q. Do you mean that a buyer returned a dress without first inquiring of you? A. Absolutely.

Q. Did you give any instructions to the buyer that he was to first inquire of you as to whether or not a dress should be returned? A. Not necessarily.

Q. Did you give any instructions to the buyer that any inquiry was to be made by the buyer as to whether or not in fact the dress was a copy? A. No.

Examiner Bennett: We will take a recess of ten minutes.

8024

Mr. Albert: Thank you, your Honor.

(Thereupon a short recess was taken.)

By Mr. Albert.

Q. Now, Mr. Liberman, have you any knowledge as to the manner—by “manner” I mean mechanics—of the work of the local Guild shopper in relation to your store? A. The only thing I would have would be more or less supposition on my part.

Q. More or less what? A. Supposition, as to what her duties might be.

Q. I do not mean as to what her duties might be. I mean as to how she actually operated when she went into your store. What did she do when she went into your store? A. I did not see the shopper shop our department, and could not come to any conclusion as to what brought her there, or what her duties were in going through our stock, what the motive was.

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Q. You knew who she was, did you not? A. I had met her.

Q. You had met her? A. Yes.

8026.

Louis Liberman—For Commission—Cross.

Q. And when you met her, she introduced herself to you as the representative of the Guild, to shop the store? A. Yes.

Q. Did she inform you of the fact that she was going to come into the store and look over your stock, to look for copies? A. I don't recall.

Q. Would you say that she did not? A. That she did.

Q. That she did not tell you that. A. I can't say.

Q. But, as a matter of fact, you knew that is what she was going to do? A. Absolutely; that was the practice.

8027

Q. And, of course, if you cannot tell us definitely as to what she actually did, it is obvious that none of your buyers made any complaints as to how she acted, did they? A. With the permission of the Court, I would like to clarify that, if I may have that permission.

Examiner Bennett: If you will answer the question, then, if you have any explanation to make, you may go ahead. The question asked you is whether any of your buyers made complaint about the shopper.

The Witness: What I was going to say was this: That it happens that Ed. Schuster & Company have three stores in Milwaukee, and the shopper may have gone to any one of the three stores when the buyer was not present and selected such styles from either one of these three stores.

8028

By Mr. Albert.

Q. But what she did, she did openly, didn't she? A. That's right.

Q. That is, there was no concealment in what she attempted to do, was there? A. None whatsoever, to the best of my knowledge.

Q. You stated that there are three stores of Schuster & Company in Milwaukee? A. That is true.

Q. And all of the figures that you have been presenting are a compilation of the figures of the three stores combined, isn't that so? A. Correct.

Q. There is no breakdown of these figures for each store that you have presented, is there? A. There is none.

Q. Mr. Liberman, would you be good enough to tell us the price lines of the vendors of the dresses, as set forth in Commission's Exhibit 542? A. I cannot.

Q. Do you know the price lines of any of them? A. Trussel Dress Company, I believe, is a \$4.75 wholesale resource. The Irving Frocks, to the best of my recollection, is a \$6.75 resource. The Emporium Frocks, I believe, is both a \$3.75 and a \$4.75 resource. Outside of that, I cannot state.

8030

Q. Do I understand this exhibit correctly to be the total number of dresses returned in all three departments? A. In all three departments?

Q. In all three stores. A. Merchandise for all stores in which that style was in stock. In other words, there may have been one dress at one store, there may have been five in another.

Q. Yes. A. All that particular style was gathered together and returned.

Q. And the total, therefore, of all dresses returned in all departments in three stores was 101 dresses? A. 101 dresses.

Q. That is the figure you have here. A. As stated on that memorandum.

8031

Q. Can you give me an approximation of the total number of dresses handled in all three departments, in all three stores? I don't want it specifically, but as close an approximation as you can give. A. I haven't that information available.

Q. Would you say that it was 500,000 dresses? A. I don't know.

8032

Louis Liberman—For Commission—Cross

Q. Would you say it was 250,000 dresses? A. I don't know.

Q. Would you say it was 500 dresses? A. I don't know.

Mr. Albert: Have you Commission's Exhibit 552?

Mr. Haycraft: Here is a copy of it. I haven't the original.

By Mr. Albert.

8033

Q. Now, Mr. Liberman, looking at Commission's Exhibit 552, does that refresh your recollection, and is that of assistance to you in approximating the number of dresses that were handled by Schuster & Company? A. In the price line qualifications mentioned on this sheet.

Q. Only? A. That's all.

Q. And you have no idea whatsoever of the amount of dresses handled in the other price lines? A. I have not.

Q. And you say that, despite your position in Schuster & Company, and the experience that you have had, and the figures that you have attempted to compile for presentation to the Commission, that you can make no estimate of the total number? A. I cannot.

Q. Looking at Commission's Exhibit 542, will you be good enough to tell me which of those returns were of "hot" numbers? A. I cannot answer.

8034

Q. You don't know? A. I don't know. All such action was taken through the Guild representative and our buyer.

Q. But however hot the number might have been, the greatest number of dresses that you returned in any style according to this exhibit, was 12, is that correct? A. That is right.

Q. Is this true, Mr. Liberman: That although you have listed, for example, Franken and Klein as having been returned twelve dresses, which is the greatest number of returns on this list that may actually represent, perhaps,

two, three or four different styles, in so far as you know? You don't know that that twelve represents only one style, do you? A. That I could not say.

Q. How often, Mr. Liberman, do you check your figures with respect to the stock on hand? A. There is, in the regular course of business, and through channels already established, a weekly inventory compiled for my benefit.

Q. And those figures are presented to you? A. They are.

Q. And I presume that the last figures you saw were the last week's figures? A. I received them on Tuesday or Wednesday, and that is a record of stock on hand as of the Monday previous.

Q. So that the figures that you see represent the stock on hand of approximately four or five days before that time, is that correct? A. No.

Q. Roughly speaking? A. No. All inventories are compiled on Monday, all stock taking is completed on Monday. It takes a matter of a day or two to compile the figures and forward them to the merchandise office.

Q. I misunderstood you. I am sorry. Have you seen those figures each week that they were prepared? A. Unless I was away.

Q. Now, can you, drawing upon your knowledge of the figures presented to you from week to week, tell us approximately the stock carried by Schuster & Company during the period from September, 1935, to date? A. I cannot.

Q. What were the last figures that you saw?

Mr. Albert: Withdrawn.

By Mr. Albert.

Q. Can you obtain for us the total volume of dresses held by Schuster & Company during 1935, down to February, 1936?

8038

Louis Liberman—For Commission—Cross.

Mr. Haycraft: That is objected to.

The Witness: I cannot.

By Mr. Albert.

Q. Have you any objection to giving us those figures?

Mr. Haycraft: That is objected to.

Examiner Bennett: What is the question?

(Question read by the reporter.)

Mr. Likert: I think I can answer that question for the witness. We prefer not to go through our records.

8039

Mr. Albert: If your Honor please, I am not asking the witness for a specific, accurate figure, even within a hundred, or even a thousand, of the number of dresses that he has. But it seems to me most unusual that a man in his position cannot give me an approximation of the number of dresses on stock in Schuster & Company during the period in question. They have presented these figures. There is no reason why they cannot present the other figures.

Mr. Haycraft: I object to any such assumption that it is natural that if a man is a merchandiser he carries around things in his mind, such detail figures as that. The fact of the matter is, it would be very unusual. I have never seen a man yet who could do it. I don't think there is a man living that can do it.

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Mr. Albert: It is nothing unusual for men in the position of Mr. Liberman to be able to approximate within 10,000, or even 25,000, of the number of dresses handled by Schuster & Company.

Mr. Likert: Is it going to be of any benefit to you, Mr. Albert, to know what the figure is, when the witness has testified he does not know what it is? The witness is unable to give the approxima-

tion. For you to get the accurate information is not going to assist you in determining whether he knows or not. And he does not know.

Mr. Albert: With all due respect, the figure presented may be, perhaps, of just as much benefit for my purpose when it is 50 per cent. of the actual amount as if I had the total actual amount.

Examiner Bennett: Will you go back and read the underlying question?

(Question read by the reporter.)

Examiner Bennett: Your question was answered by the attorney for the witness and, so far as the Examiner is concerned, that disposes of it. That is, the Examiner has taken that position with respect to every witness. He has no objection to Schuster & Company giving them if they feel like it, but he does not think they are under obligation to give the figures as part of the cross-examination.

8042

Mr. Albert: Exception, your Honor.

Examiner Bennett: All right.

Mr. Albert: I will ask you this question:

By Mr. Albert.

Q. Now, Mr. Liberman, can you, or perhaps I should say, have you any objections to giving me an estimate, approximately, of the total number of dresses sold by Schuster & Company, on an average in its three stores daily? A. I cannot.

8043

Q. Can you say, Mr. Liberman—

Mr. Albert: Withdrawn.

By Mr. Albert.

Q. Will you say, Mr. Liberman, the total number of dresses sold in the three stores of Schuster & Company average approximately in excess of 100 a day? A. I—

8044

Louis Liberman—For Commission—Cross.

Mr. Haycraft: Just a moment, please. Same objection to any further interrogation on this point. The witness has said he could not do it.

Mr. Albert: I have asked him a different question.

Mr. Haycraft: It all goes to the same point.

Examiner Bennett: The witness made some reply on that. Will you read what the witness said?

(Record read.)

By Mr. Albert.

8045 Q. Can you give that? A. I cannot.

Q. Would you say that it was in excess of an average of fifty per day?

Mr. Haycraft: Same objection.

Examiner Bennett: I will sustain the objection. We do not seem to make any progress. Let us assume that the witness does not know, or cannot give it.

By Mr. Albert.

8046 Q. Have you any idea, Mr. Liberman, as to the relative position occupied by Schuster & Company in Milwaukee, in comparison with other department stores, in the sale of better dresses, as you have described, that is, above the \$10.75 price line? A. I think we have a very favorable comparison.

Q. Would you say you were about fourth? A. I would not acknowledge that.

Q. You would not say you were the leading store in the sale of better dresses, would you? A. No.

Q. Now, how many dresses are purchased by Schuster & Company in the \$16.95 price line, and above, for purposes of display?

Louis Liberman—For Commission—Cross.

8047

Mr. Haycraft: That is objected to. The witness has already testified as to his knowledge.

Examiner Bennett: If he does not know, he does not have to state.

Mr. Haycraft: What is the use of filling the record with it, when he has already said it two or three times?

Examiner Bennett: I don't believe that question has been asked or answered. He may answer.

The Witness: Your Honor, it is a matter of record, of how many dresses at \$16.95 we carry in stock.

Mr. Albert: Will you repeat the question?

(Question read.)

8048

The Witness: This record here, Exhibit 552, gives you the approximate amount of dresses we carry at \$16.95 at each inventory period taken weekly, and which we feel is a representative number of dresses, and the number of styles for us to do business.

By Mr. Albert.

Q. Isn't it a fact, Mr. Liberman, that Schuster & Company purchases better dresses for purposes of display, in order to attract their patrons, without the expectation of being able to sell?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

8049

Mr. Martin: No foundation.

Examiner Bennett: I do not see how it is relevant. Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. What did you mean, Mr. Liberman, when you stated, in answer to a question of Mr. Haycraft, that your in-

8050

Louis Liberman—For Commission—Cross.

ability to obtain Guild merchandise has retarded the display on dresses retailing at \$16.95 and above? A. The term was used that, after all, you have got to have merchandise in stock before you can sell it.

Mr. Haycraft: What page is that, please?

Mr. Albert: 4455.

The Witness: In using that term, I meant stock for display and promotion.

By Mr. Albert.

8051

Q. Did you mean by that simply that if you did not have the dresses, you could not display them? A. That is right.

Q. And it had no other connotation? A. Well, I would like to get the answer that I gave to that question.

Q. Here is your answer, Mr. Liberman: "It has definitely retarded the display, the sales, and the ways and means of catering to Ed. Schuster & Company's clientele on dresses retailing at \$16.95, and above." Now, when you answered that, did you mean that three separate—

Mr. Albert: Withdrawn.

By Mr. Albert.

8052

Q. Did you mean by that that Ed. Schuster & Company was affected in three separate and distinct ways by your inability to obtain Guild merchandise? A. The three ways that we suffered, lost volume, are covered in that answer.

Q. Are they three separate, mutually exclusive ways in which you are affected? That is what I mean. A. I mean the net result is part of all three.

Q. So that what you meant by "display" is included in the ways and means of catering to Ed. Schuster & Company's clientele? A. I would like to refer to this, all of

which is a part and parcel of promoting and selling and displaying of merchandise, and, in the activities of the dress departments, all three are embodied in catering to the clientele of Ed. Schuster & Company. We have a definite clientele for merchandise at the price line quoted.

By Mr. Albert.

Q. So that all three elements that you have mentioned there are interrelated, is that so? A. That is correct.

Mr. Albert: That's all I wanted to find out.

Mr. Haycraft: It speaks for itself. There is nothing ambiguous about it.

Mr. Albert: I will not give you any lessons in grammatical construction, Mr. Haycraft. It is too late. Will your Honor pardon me for just a moment?

8054

Examiner Bennett: Very well.

(Short interruption.)

By Mr. Albert.

Q. Now, Mr. Liberman, in answer to questions from Mr. Haycraft, you referred to a certain type of dress.

Mr. Haycraft: What page?

Mr. Albert: 4458.

By Mr. Albert.

8055

Q. And you have characterized it as half-size resources. Can you give us a little better explanation of what you meant by that? A. It is a type of garment which is known in the trade as being built on half-size, whether it is a misses' half-size or women's half-size, and happens to fit a certain type of figure. There are recognized resources for such type dresses.

8056

Louis Liberman—For Commission—Cross.

Q. Is there any other name by which those dresses are known, aside from the actual description of them as half-size resources? I mean, aren't they known as "little women's dresses," also; is that correct? A. Such a term is used.

Q. I mean, in relation to half-size resources, I want to know what you are referring to there. A. Yes, I believe there is such a term.

Q. Are you acquainted with Fairchild's Directory? A. I have seen them, yes.

Q. Fairchild's Directory contains lists of manufacturers in various classifications, does it not? A. I believe so, yes.

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Q. Now, Mr. Liberman, I show you Respondents' Exhibit 21 for Identification, and I show you specifically the subdivision thereof headed "Little Women's Dresses." Is that the type of dress which you were referring to generally—

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. (Continuing) —when you referred to half-size resources? Is that the name also applied to that type of dress, "little women's dresses"? A. There is a heading here, "Little Women's Dresses." Not having used this directory, I cannot say whether that applies to the merchandise in question or not.

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Q. But when you said that the title "Little Women's Dresses" was also used to describe half-size resources, is that what you meant, that "little women's dresses" and half-size resources are somewhat synonymous in the industry to describe the type of resource you were referring to on page 4458? A. That may be; but not being a buyer, I had no occasion to use this directory.

Q. I am not asking you that. I am asking you if that is what you mean also by "little women's dresses," half-size resources?

Mr. Haycraft: That is objected to. Counsel is seeking to get the witness to identify something, when the witness did not do so in his examination.

Examiner Bennett: If he knows whether they are synonymous terms, I would like to have him say so. If they are not synonymous terms, to him, I would like to have him say so.

The Witness: I made the statement that I had no occasion to use this directory. It is the function of the buyer to find resources for the merchandise for which he is scouring the market.

8000

Mr. Albert: May I ask the witness' answer be stricken? I think all your Honor wanted to know was whether the title "Little Women's Dresses" was synonymous with his use of the expression "half-size resources," and I believe the witness has already testified that, substantially, that is correct.

Examiner Bennett: I wanted to see whether it does or not.

By Examiner Bennett.

Q. Are the terms "little women's dresses" and "half-sizes" the same terms in the trade? A. They may be used as a similar classification.

8001

Q. They designate the same classification, do they? A. They do, yes, sir.

Examiner Bennett: All right.

By Mr. Albert.

Q. Now, without taking the time, Mr. Liberman, to actually count them, will you accept my statement that in

8062

Louis Liberman—For Commission—Cross.

this listing in Fairchild's of manufacturers selling "little women's dresses," there are 105 manufacturers?

Mr. Haycraft: I object to that question with reference to the directory as an exhibit which is not in evidence. The witness says he never used it, he is not a buyer, he is not in a position to testify to it. I submit there is no foundation laid for such a question, and it is improper cross examination.

8063

Examiner Bennett: I will sustain the objection. I think that is a matter to show later. This witness does not seem to be acquainted with those resources. If you want to offer that document, I will entertain an offer.

Mr. Albert: Well, if your Honor please, we have been referring to it as Respondents' Exhibit 21. I believe that Fairchild's have been previously referred to by some of the Commission's witnesses.

Mr. Haycraft: Not that book.

Mr. Albert: And I certainly do not want to put the full directory into evidence, nor do I think it is necessary to put in six or seven pages of this particular exhibit. I think there is no particular secret in what I want to do. I merely want to ask the witness this question.

8064

Examiner Bennett: He does not seem to be informed, his information does not seem to be sufficient that it is worth while clearing up the record on that particular point.

By Mr. Albert.

Q. Have you in any way checked up on your buyers with respect to the resources sought to be contacted by them? A. I have not.

Q. Do you in any way know what resources they contacted in attempting to replace, as you said, the Guild manufacturers? A. I do not.

By Mr. Albert.

Q. Now, Mr. Liberman, when you state that your buyers reported to you, they could not replace Guild resources, have you any knowledge as to what they did in their attempts to replace Guild resources? A. They made the usual rounds, supplemented with the experience and knowledge of the New York market, by our—by the Cavendish representatives.

Q. But you do not know what manufacturers they visited, do you? A. I do not.

Q. And you cannot tell us? A. I cannot.

Q. Mr. Liberman, do you know whether or not Abbate-Swift make half-size dresses? A. I do.

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Q. Do you mean by that that they do make half-size dresses? A. Yes.

Q. Does Admiration Dress Company make half-size dresses? A. I do not know.

Q. Does Annetta Waist make half-size dresses? A. I do not know.

Q. Do you know whether or not Avion Dress makes half-size dresses? A. I am not familiar with the resources.

Q. Barish? A. I don't know it.

Q. Barham Dress? A. I don't know.

Q. Baron Dress? A. I don't know.

Q. Bass William? A. I don't know.

Q. Beau Monde? A. I don't know.

8067

Mr. Haycraft: I object further, Mr. Examiner, to reading from the exhibit not in evidence.

By Mr. Albert.

Q. Ben-Wal?

Mr. Haycraft: —and to which I objected to.

Examiner Bennett: I do not believe it makes any difference, if they are resources—the source of his information as to half-size dresses.

By Mr. Albert.

Q. Ben-Wal? A. I can't hear you.

Q. Ben-Wal Dress Company? A. I am not familiar with the resource.

Q. Berkley? A. I don't know it.

Q. Berman & Smith? A. I don't know them.

Q. Better Mode? A. I don't know.

Q. Bettini? A. I don't know.

Q. Black Wear? A. I don't know.

Mr. Haycraft: To save time, Mr. Examiner, I will stipulate in view of the witness' testimony, that he does not know anything about this matter—that he does not know any of the names that were red carded.

8069

Examiner Bennett: All right.

Mr. Albert: He obviously knows some of them. I want to find out what he knows.

Mr. Haycraft: He has already said he did not know. What is the object of further cross-examination on it?

Mr. Albert: I wish to state that we have taken opinions from witnesses on these matters. They have testified on direct examination, and I would like to find out what this man, who occupies the position that he does with Schuster & Company, knows about his business, if he can come here and give the opinions that he has—

8070

Mr. Haycraft: That is not a part of his—

Mr. Albert: —he has given opinions—

Mr. Haycraft: That is not a part of his duties. He has already testified. This witness is not put on as a buyer in this case.

Mr. Albert: He is superior to the buyer.

Mr. Haycraft: I submit that when we submit a witness for the purpose of testifying as to one

function, one type of business, that he should not be interrogated along lines with which he is not—for which he is not offered, and about which other witnesses who are familiar with the situation may be interrogated. It so happens in this particular case that the buyer for Schuster & Company is not with them any more, and we are unable to produce her at this time.

Mr. Albert: Then I ask, if it please the Court, that all of the testimony with respect to this particular line of examination be stricken from the record.

Mr. Haycraft: Well, now, I—

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Mr. Albert: If we cannot cross-examine the buyer because the Federal Trade Commission does not seek to go after her, and they do not want to permit us to cross-examine this man to show that there is no foundation whatsoever for the opinion as registered, except the remarks of somebody who will never be presented to the Commission, and whom we cannot get—

Mr. Haycraft: The thing is this, this witness is an official of the organization and in charge of the department.

Mr. Albert: Then he should know what he is being cross-examined about.

Mr. Haycraft: Let me get through with my remarks. You have interrupted me twice now.

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Mr. Albert: I am sorry.

Mr. Haycraft: In that capacity he has testified as to what has been told by his buyers, what reports have been made to him by his buyers, in the ordinary course of business. I submit he should not be cross-examined as to what his buyers might know or might not know, that is what this amounts to.

8074

Louis Liberman—For Commission—Cross.

If he had testified, or if he did have intimate knowledge of the industry, I would have no objection to it, but I do not see that we are getting anywhere.

Examiner Bennett: Well—

Mr. Haycraft: As I say, I am willing to stipulate that he does not know the resources, outside of the resources he has contacted that happened to come under his own supervision.

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Mr. Albert: Therefore, if it please the Court, I believe that his opinion, and his statement, that this merchandise cannot be replaced, should be stricken from the record as having no foundation, except the words of a woman who is not here, and who, for all we know, may have been discharged because of the fact that she did not contact these resources. There is nothing in the evidence with respect to it.

Mr. Haycraft: Ask him that, if you want to.

Examiner Bennett: Well, now, if you are through debating, I will make a decision.

By Mr. Albert.

Q. Blau Dress Company?

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Examiner Bennett: This witness seems to have been acquainted with some resources, and so testified. He has attempted to characterize them. I am going to let him be subjected to cross-examination as to what he knows about them.

Mr. Albert: Thank you, your Honor.

Examiner Bennett: About the other resources to a reasonable extent.

Mr. Haycraft: Now, I am willing to stipulate that he does not know anything except those that come within his own supervision, in his own organization.

Mr. Bennett: I do not think you could do that, because his testimony has shown differently.

Mr. Haycraft: He has testified he did not; he has testified twice he did not.

Examiner Bennett: I know, but he did testify in specific cases, characterizing resources, and testifying as to having such resources—and let us not—

Mr. Haycraft: Well, Mr. Examiner, I submit that he does not know anything further, outside of his own organization. If by reason of the fact he is merchandise manager of Schuster & Company, he has become familiar with every resource that Schuster & Company has been buying from, it does not necessarily follow from that fact that he is familiar with resources from whom they do not buy.

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Examiner Bennett: Maybe there are some of those resources from which he buys. I am going to let that examination go on. We are wasting time by repeated objections to it.

By Mr. Albert.

Q. Blau Dress Company? A. I don't know.

Q. Bleich Dress Company? A. Pardon?

Q. Bleich? A. Never heard of them.

Q. Blue Belle Frocks? A. Don't know them.

8079

Q. May I ask, when you say you don't know, Mr. Liberman, whether you also mean that you do not know the firm; or that you do not know what it is that they manufacture? A. I don't know the firm, or know the merchandise that they might manufacture.

Q. So that for those that you have answered "I don't know," you would put them in the same class as the Bleich Dress, to which you answered "never heard of them"? A. Correct.

8080

Louis Liberman—For Commission—Cross.

Q. Thank you. Bosnjak Meyer? A. I don't know.

Q. Caron Brothers? A. I don't know.

Q. Cheerful Dress? A. I don't know.

Q. Cohen Brothers? A. Pardon?

Q. Cohen Brothers? A. I don't know them.

Q. Constantine Dress? A. Might I get a clarification of that? There may be—these houses that are mentioned in his directory, may be making half-size dresses and also larger sizes. Now, I think that my statement yesterday covered both lines. Now, some of these houses that you have mentioned may be making womens' dresses that we have bought, but I don't know whether they make half sizes, little womens or regulars.

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Q. Would it be any information to tell you, Mr. Liberman, that the houses that I have just listed are contained in the same category as houses that you have mentioned on page 4458 of the minutes, are also listed in that category as being little women's dresses resources? A. Still does not clarify the question. I mean, that you have asked me if I know that they make a little women's dresses.

Q. Yes. A. I do not know, any such answers as I have given you are to the best of my knowledge.

Q. Very well. Fashion Wear Dress Company? A. I don't know.

Q. Form-Fit Dresses? A. I don't know.

Q. Harry Frank? A. I believe they make both womens and half sizes.

8082

Q. Geffen, M. L. Co., Inc.? A. I don't know.

Q. Joan Sportwear? A. I don't know.

Mr. Albert: I will just take a few more, your Honor—

Examiner Bennett: Very well.

Mr. Albert: —to give us a cross section.

By Mr. Albert.

Q. Pommy Dress Corporation? A. Pardon?

Q. Pommy Dress Corporation? A. Never heard of them.

Q. Radiant Dress? A. I believe they make both women's and half sizes.

Q. Bennie Schwartz & Company? A. Don't know.

Q. Simonetti, Inc.? A. I have heard of the firm, but I cannot qualify what type dress they make.

Q. Smart Woman Dresses, Inc.? A. Don't know them.

Q. Max Wiesen & Sons? A. They make half sizes.

Q. Now, let us take the last one, Zuckerman & Rubin, Inc.? A. I don't know.

Mr. Albert: For the record, if it please the Court, I have merely taken at random certain names from a list.

Examiner Bennett: All right.

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Mr. Albert: That we believe to be these particular houses, and which we will bring out more specifically on direct.

Mr. Haycraft: I move to strike out all the testimony bearing on that point.

Examiner Bennett: Denied.

By Mr. Albert.

Q. Now, Mr. Liberman, you have testified that as long as you are red carded you cannot give your customers, and I am paraphrasing, the type of merchandise that they want, is that so? A. That's the way we feel about it, yes.

Q. Now, what do you mean by type of merchandise? A. We feel that Ed. Schuster & Company have a certain standard, certain quality, and a consciousness of fashion right merchandise as any of our competition, and unless we can get the merchandise that we feel will represent the kind of business that we have done in the past, and we hope to sustain for the future, we will not put in such merchandise that we cannot find that represents these qualifications.

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Louis Liberman—For Commission—Cross.

Q. You obviously did not understand my question, Mr. Liberman. What is there about this type of merchandise that makes it so necessary for your store? A. From past experience and records and sales.

Q. Can you tell us what elements there are that comprise the type of merchandise that is manufactured by Guild manufacturers and which is what you are looking for? A. Primarily fashion——

Q. By fashion, do you mean style?

Mr. Haycraft: Wait a moment, he has not completed his answer.

Examiner Bennett: Go ahead.

8087

The Witness (resumed): Speaking of fashion, speaking of material, speaking of fit, speaking of fabrics, and quality of workmanship, plus value.

By Mr. Albert.

Q. Would you not say that material and fabric are the same? A. Yes—I am sorry if I repeated.

Q. And would not you say that substantially fit and workmanship were the same? A. No, sir.

Q. Well, what distinction do you make between fit and workmanship? I want to understand you thoroughly, Mr. Liberman. A. Fit is a matter of sizing, of cutting—certain resources that are known that have a standard of patterns

Q. Yes, but is not that the result of the workmanship?

8088

A. Not necessarily.

Q. What are you referring to, then, in workmanship?

A. Workmanship is the completed garment, the sewing of the garment and the finishing of it after it has been cut; they are in two different, entirely different classifications.

Q. Very well. I just wanted to know what you are referring to, that is all. Now, is there any one of those elements which is primarily important to Schuster & Com-

pany in the type of merchandise that it seeks? A. I think primarily what the customer seeks, along with fashion, is fit.

Q. Can you tell me which is of the greater relative importance as between the two, fashion and fit? A. It is a matter of judgment; and after all customers' paramount interest is in getting the kind of garment that she is satisfied with.

Q. Would not you say that no matter how well a garment would fit, the customer would primarily be interested in the fashion and the style that that garment was in? A. I presume so, yes.

Q. And that if she did not like the style, or the fashion of the garment, she would not even get to the position where she would be interested in seeing whether it would fit or not? A. That may be true.

8090

Q. So that are we safe in saying, in so far as you are concerned, that the first thing that a customer—and of course, we are referring to women customers—looks at, is the influence of a garment, is the fashion and the style?

Mr. Haycraft: I object; he did not say that.

Mr. Albert: Well, I am asking him, if it please the Court—

Mr. Haycraft: Well now—

Mr. Albert: —if that is what he will agree to, or concede.

The Witness: I do not agree to it.

8091

By Mr. Albert.

Q. Is it your contention that your customers looks first to workmanship, to fit, and material—

Mr. Haycraft: Well—

8092

*Louis Liberman—For Commission—Cross.**By Mr. Albert.*

Q. —before she looks at the style of a dress?

Mr. Haycraft: I am going to object to that, Mr. Examiner.

Examiner Bennett: Overruled.

Mr. Haycraft: No foundation laid for that question.

The Witness: I cannot qualify that. After all, I am not the buyer, nor am I directly responsible for the selection and sale of merchandise on the floor, and I am not here as a prophet to give an answer as to what the customer looks for when she comes to Ed. Schuster & Company.

8093

By Mr. Albert.

Q. Well, Mr. Liberman, is not what I am asking not alone a question of prophecy, as to the future, but dependent upon your knowledge of what has happened in the past? A. It may have happened.

Q. Well, from your experience in the dress industry, would you not say that the first thing that attracts a potential customer, a lady, to a dress, is the fashion and the style of that dress?

Mr. Haycraft: That is objected to; he has already said it was not.

8094

Examiner Bennett: Overruled; he may answer. You may answer. If it is not the first, say so.

The Witness: I think that is part of the whole.

By Mr. Albert.

Q. Mr. Liberman, how long have you been in the dress industry? A. Pardon?

Q. How long have you been in the dress industry? A. In the dress industry?

Q. Yes, connected with any phase of ready to wear women's dresses? A. Well, as far as the merchandising and retailing of dresses is concerned, it has only known a—or has only been an important factor for about twenty-five years.

Mr. Albert: May I have the answer read?

(Last question read by the reporter.)

Mr. Albert: May I ask that the answer be stricken? All I asked the witness was as to how long he has been connected with the dress industry.

The Witness: I have not been interested in the industry at all, only from the standpoint of merchandising and retailing.

By Mr. Albert.

Q. And you say that your experience covers a period of twenty-five years? A. In the dresses, yes.

Q. During that time, have you ever been in supervision over the buying of dresses direct supervision over the buying of dresses? A. I have.

Q. And in that supervision have you assisted in the buying of dresses? A. It might be so termed.

Q. Well, when you say it might be so termed, what have you in mind as demonstrating that you have assisted in the buying of dresses? A. That I visited showrooms.

Q. That is, that you have gone out with your buyers and looked at dresses, and possibly discussed with them whether this dress should be bought, or that dress should be bought? A. Yes, that's right.

Q. And in connection with those duties you have gone and visited the various markets, is that right? A. That's true.

Q. Have you ever yourself actually been what is technically known as a buyer? A. I have.

Q. For how long a period of time would you say that you were actually a buyer? A. I can't recall.

Q. Can you give us any rough estimate? A. Possibly eight or ten years.

Q. Now, what is there in the style of the dresses manufactured by Guild manufacturers that is desired by Schuster & Company? A. I don't get the question. Will you read it?

Q. (Last question read by the reporter.) A. Well, all I can say it may mean a type.

Q. A certain type or style? A. A certain type of dress.

Q. No, no, you have set forth three or four elements that are taken into consideration by the customer, in purchasing a dress, is that correct? A. That's right.

8099 Q. And you have also, I believe, or, shall I say, Mr. Haycraft has conceded, that perhaps the most important of those elements is style of a dress? A. That's right.

Q. Now, disregarding the other three elements, what is the important feature of the style that is manufactured by Guild manufacturers, which is necessary to Schuster & Company? A. Well, it may be a type, it may be a dress that has a certain eye appeal to-day that we feel that we need. Thirty days from now we may not want it. That is all a matter of time. If we feel that the time is opportune to have selected such merchandise in season, or before the season, or for a time to come.

Q. And would you say that in that timing the Guild manufacturers display, for the purpose of showing to you these styles, ahead of others? A. Not that, no preference
8100 to Ed. Schuster & Company.

Q. No, I did not mean that Schuster & Company was on any preferred list, or was sold in preference to anybody else. My question was directed at this: You stated that there is a timing element in getting the style, it may be necessary now, and not a month from now—correct? A. That is.

Q. Now, in that element of timing, would you say that Schuster & Company looks to Guild manufacturers to first

present the styles that Schuster & Company thinks it needs? A. I do.

Q. What makes style? A. Makes style?

Q. Yes. A. I am not qualified to answer.

Q. After twenty-five years in the merchandise end of the ready-to-wear business, and after ten years as a buyer, you cannot give us any definition of what makes style, or how style is developed? A. Style is a matter of eye appeal, and what might—I would like to have the attention of counsel. It is no reflection on you, but I am addressing my remarks to the attorney here, and I cannot concentrate.

Mr. Post: I apologize.

Mr. Haycraft: Do you want the beginning of your answer? 8102

The Witness: Yes, if I may have it, please.

Mr. Haycraft: Read it to him.

(Answer read by the reporter.)

A. (Continuing) —and what might be a fashion right garment for one person, would not have any bearing on another. It is the willingness to accept a garment or a fashion upon the customer that makes it. Also, in the number of such customers who are willing to accept it and buy it freely.

By Mr. Albert.

Q. Wouldn't you say that a particular garment becomes the style by reason of its widespread acceptance by the public generally? A. Not necessarily. 8103

Q. Isn't that what you mean when you say that a dress is in style? A. It may have elements, this garment, that is in fashion.

Q. Yes. Now, from your experience in the industry, can you tell us how style, how a fashion is developed?

8104

Louis Liberman—For Commission—Cross.

Mr. Haycraft: Objected to as irrelevant and immaterial, not proper cross-examination.

Mr. Albert: Laying the foundation, may it please the Court, for subsequent questions.

Examiner Bennett: He may answer.

The Witness: Would you mind repeating the question?

(Question read by the reporter.)

The Witness: It may be an inspiration that is received from a mode, a historical event, a period of past fashion. It all depends on the ability of a designer or others to capitalize certain elements, certain factors, or for a popular trend to get the most out of them.

8105

By Mr. Albert..

Q. Where would you say that that, to use your word, inspiration, or adoption of a historical trend, or of a past style, first originates? A. In the mind of the designers.

Q. To bring you down more specifically, would you say that that originates in this country, or on the other side, generally speaking? A. You cannot geographically place any particular fashion.

Q. I agree with you on that. But where would you say most, perhaps, of the inspirations and the establishment of the trend of style developed? A. Would you mind repeating the question, please?

8106

Mr. Albert: Read the question.

(Question read by the reporter.)

The Witness: The public conception is that Paris originates most of the styles that are adopted and adapted in this country.

By Mr. Albert.

Q. When you say the popular conception is that they are originated in Paris, do you mean to infer that styles are also originated in this country? A. Yes.

Q. What do you mean when you say that styles are originated in this country? A. There are certain style trends and developments that come from American designers.

Mr. Haycraft: I wish it understood, Mr. Examiner, that I have an objection to this entire line of questioning as irrelevant and immaterial, and not proper cross-examination. I did not go into it at all on direct.

8108

By Mr. Albert.

Q. Now, Mr. Liberman, is it this type of style and the fashion as developed that Schuster & Company seeks from the members of the Fashion Originators Guild? A. That is one of the elements.

Q. That you look for when you purchase from them? A. That is right.

Q. From your experience as a merchandise manager, and as a buyer for ten years, do you acknowledge that there is such an evil in the industry as style piracy?

Mr. Haycraft: That is objected to.

Examiner Bennett: He may answer.

8109

By Mr. Albert.

Q. Speaking for Schuster & Company, of course. A. I have heard of such practices.

Q. Do you also subscribe to the proposition that those practices are an evil in the industry?

8110

Louis Liberman—For Commission—Cross.

Mr. Haycraft: Same objection.

Examiner Bennett: Overruled. He may answer.

The Witness: Well, it is all a question of how you interpret the matter of policy, if you want to qualify it by also saying there may be adaptations or replicas of a fashion that may have appeared at some previous time or period.

By Mr. Albert.

8111 Q. Conceding, Mr. Liberman, for the sake of argument that all present-day fashions originally may have had their first forte hundreds of years ago, and that the present-day style of dresses is an adaptation of those styles to conform them to present-day practices and to the present-day silhouette of a woman, and to the present-day intelligence, would you say that the copying of those adaptations of the dresses that were originated hundreds of years ago, if you will, was an evil? A. Not necessarily, if the designer received inspiration or ideas from seeing photographs or sketches.

Q. What do you mean by a copy? What is it that is copied? A. A dress may be copied identically, from the standpoint of taking everything out of what we might term an original dress.

Q. Yes. A. That might be termed a copy.

8112 Q. Yes. A. But, on the other hand, as I see this copying evil, it is very seldom in my experience that we have ever had a direct copy in every detail. And when I speak of every detail, I speak of fashion, fabric, workmanship, findings or trimmings, that you had in the original dress.

Q. Have you had a copy sufficient to resemble, to use your term, the original dress from which it was copied?

A. We may have.

Q. And to create confusion in the public mind? A. That has appeared, yes.

Q. Now, insofar as that definition of copy is concerned, isn't and wasn't that an evil in the industry? A. I believe it was an important factor.

Q. In the light of your testimony, Mr. Liberman, is not the program of the Fashion Originators Guild best suited to the elimination of that evil?

Mr. Haycraft: That is objected to. No foundation laid. Irrelevant and immaterial. Improper cross-examination. Particularly in the light of the statement made by counsel for the Commission, as to the lack of an issue on this point.

Mr. Albert: I didn't quite get counsel's last statement.

8114

Mr. Haycraft: Read it to him.

(Record read by the reporter.)

Mr. Albert: If your Honor please, I again ask if we cannot have a specific, definite statement from Mr. Haycraft, instead of equivocal language in an objection of lack of an issue of this matter, and I ask Mr. Haycraft now, in the light of his repeated remarks with respect to the lack of an issue, if the Commission is willing to concede that there is an evil in the industry, and that the program of the Guild is designed to meet that evil. We do not have to meet the same sort of argument in every city to which we go.

Mr. Haycraft: I repeat, I concede nothing.

8115

Mr. Albert: Then I ask him to step his objections, unless he wishes to tell us why he is objecting.

Examiner Bennett: He may answer, if he has any opinion.

Mr. Haycraft: He has not shown that he knows what the program is.

8116

*Louis Liberman—For Commission—Cross.**By Examiner Bennett.*

Q. Do you have any opinion upon that? A. I have not formed any opinion.

By Mr. Albert.

Q. Schuster & Company seeks to obtain these styles from the Fashion Originators Guild, does it not? A. It seeks to do business with these firms.

Q. Yes. -A. That's right.

Q. Because of the fact that it desires these styles, does it not? A. That is right.

8117

Q. And, of course, Schuster & Company is not the only retail department store, or retail store, that desires to purchase dresses from Fashion Originators Guild manufacturers, are they? There are others, are there not? A. I presume so, yes.

Q. Now, is not the program of the Guild designed for the purpose, in the light of your testimony, that an evil exists with respect to copying, of protecting and maintaining for all retailers the integrity of the merchandise of these manufacturers as well as for Schuster & Company?

Mr. Haycraft: That is objected to. There is no foundation laid for the question. The witness is not a member of the Guild.

8118

Examiner Bennett: I shall sustain the objection to it.

By Mr. Albert.

Q. Have you ever seen the declaration of co-operation signed by Schuster & Company?

Mr. Haycraft: That is objected to.

The Witness: I have.

Mr. Haycraft: As irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: He has answered. Go ahead. *Overruled.*

Mr. Haycraft: I don't think I got the answer, your Honor.

Examiner Bennett: He said he had.

Mr. Likert: Don't answer, when an objection is made, until there is a ruling.

By Mr. Albert.

Q. Did you discuss this with the officials of Schuster & Company?

8120

Mr. Haycraft: That is objected to as irrelevant and immaterial, not proper cross-examination.

Mr. Albert: Laying a foundation, your Honor.

Examiner Bennett: *Overruled.*

Mr. Albert: I do not want to be left with the objection, if I jump into the middle of it, that no foundation has been laid.

Examiner Bennett: I will see what it is. Go ahead.

The Witness: Pardon me?

By Examiner Bennett.

Q. Have you discussed that particular thing? A. The matter of the letter of co-operation with the Guild was on file with the F.O.G.A.; at the time I went with Schuster & Company, we were following the rules and regulations and the declarations of the memorandum.

8121

By Mr. Albert.

Q. And you were in hearty accord with the principles of the Guild—

Mr. Haycraft: That is objected to.

8122

*Louis Liberman—For Commission—Cross.**By Mr. Albert.*

Q. (Continuing) —were you?

Mr. Haycraft: Not proper cross-examination, irrelevant and immaterial, whether he was or was not.

Examiner Bennett: What is the question?
(Question read by the reporter.)

By Mr. Albert.

Q. Were you not?

Examiner Bennett: I will sustain the objection.

8123

By Mr. Albert.

Q. Prior to your coming with Schuster & Company, Mr. Liberman, did you have any knowledge of the declaration of co-operation issued by the Fashion Originators Guild?

Mr. Haycraft: That is objected to as irrelevant and immaterial, and not proper cross-examination.

Examiner Bennett: I will let him answer. It may be a preliminary question.

The Witness: I remember such a memorandum.

By Mr. Albert.

8124

Q. As a matter of fact, is it or is it not true that while you were with Stix, Baer & Fuller, you signed, on behalf of Stix, Baer & Fuller, the declaration of co-operation that was signed by them? Is that so, or is it not? I don't know, I am asking you.

Mr. Haycraft: Just a minute. Do not answer until I object. That is objected to, if your Honor please, as irrelevant and immaterial, not proper cross-examination.

Mr. Albert: The only purpose of it, your Honor, is to demonstrate this witness' knowledge of the

contents of the declaration of co-operation which he has said had already been signed when he went with Schuster & Company, and that, therefore, he had duplicate knowledge. I think the declaration of co-operation is the same, no matter where it is.

Examiner Bennett: I think he testified he had knowledge of the Schuster declaration.

Mr. Haycraft: As a matter of fact, the Schuster declaration is different from the others.

Examiner Bennett: I will sustain that objection. I do not think the other firm is in this inquiry.

By Mr. Albert.

8126

Q. Now, Mr. Liberman, what did you mean when you said that the good will of Schuster & Company had been hurt by your inability to obtain merchandise from Guild manufacturers? A. Do you mean—will you repeat the question, please?

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: On what page is that?

Mr. Albert: 4458.

A. (Continued) In the course of business, we experienced in the spring season, we had customers of Ed. Schuster & Company, who could not find in our stocks the type of merchandise which we had been accustomed to carry, and from vendors, members of the Guild, with which we could not find similar types for replacement, and we definitely feel we have lost the good will of customers who came for this merchandise and were compelled to go elsewhere to get it. This foundation of fact is reflected in the loss of sales.

8127

8128

*Louis Liberman—For Commission—Cross.**By Mr. Albert.*

Q. Since you have testified that the copying of original dresses was an evil, do you not admit that the manufacturer of such dresses has a good will to preserve in protecting it? A. I don't believe I get the question.

Mr. Haycraft: Just a minute. I object to that question, as assuming a statement of fact that is not in the record. The witness did not say that he considered it an evil.

Examiner Bennett: If you will revise your question so as to ask him directly whether he thinks the manufacturer has good will to protect, I will let him answer.

8129

By Mr. Albert.

Q. Mr. Liberman, let me ask you this question: From your experience as a merchandise manager, will you not say that the ability to produce dresses such as are demanded by and desired by Schuster & Company is an item of good will to the manufacturer of those dresses?

Mr. Haycraft: I object as irrelevant and immaterial.

Examiner Bennett: Overruled.

The Witness: I want to get the interpretation of the question.

8130

Mr. Albert: Read the question.

(Question read by the reporter.)

A. I believe it is a matter of reciprocity between the vendor and the retailer.

By Mr. Albert.

Q. Just what do you mean by that? A. I mean there is good will on both sides that has to be maintained.

Q. But, in so far as the manufacturer is concerned, is not his ability to sell his dresses predicated upon the items which you say you demand, his good will?

Mr. Haycraft: Same objection, irrelevant and immaterial to the issues involved in this case, not proper cross-examination.

Examiner Bennett: Overruled. Go ahead and answer it, if you have any answer.

The Witness: I don't quite get the question. I think I answered previously to the questions asked, and, to the best of my knowledge, I covered it.

Mr. Albert: Let me put it this way:

By Mr. Albert.

Q. Will you not say that the desire of Schuster & Company and of other department stores to obtain as much Guild merchandise as possible, due to the factors that you have stated, constitutes the good will of that manufacturer towards his customers? A. Well, there is another factor that we seem to be getting away from, and that is the fact that Schuster & Company stores have to be on a competitive basis with other stores in our communities, and when you say department stores, you are leaving out what we consider the greatest menace to our business.

Q. I am merely speaking now in the abstract, from the manufacturer's point of view. Has not the manufacturer, in establishing and fostering a desire on the part of Schuster & Company for his style, set up a good will which is of value to him? A. I would not qualify that statement.

Q. Do you say you don't know? I didn't quite understand. A. I cannot qualify the statement or the question.

Q. I don't think I follow you, as to what you mean by that you cannot qualify it. A. I cannot answer the question.

8134

Louis Liberman—For Commission—Cross.

(Whereupon, at 4.30 o'clock P. M., August 26, 1936, the hearing in the above-entitled matter was adjourned, to reconvene at 10 o'clock A. M., tomorrow, Thursday, August 27, 1936, at the same place.)

Room 1123, New Post Office Building,
433 West Van Buren Street,
Chicago, Illinois,
August 27, 1936.

Met, pursuant to adjournment, 10 A. M., E.S.T.

8135

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: Be in order, please.

LOUIS LIBERMAN thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

Cross-examination (resumed) by Mr. Albert.

8136

Q. Mr. Liberman, as merchandise manager, is it not one of your functions to watch the stock on hand in order to see to it that the stock on hand is kept in a proper proportion and ratio to the sales? A. May I have that question?

(Question read by the reporter.)

The Witness: It is.

By Mr. Albert.

Q. And is not the necessity for such observation on your part the attempt to combat the possibility that any depart-

ment is purchasing more goods than it can sell? Because, if a department purchases more goods than it can sell, the surplus is lost by reason of mark-downs, isn't that so, generally speaking? A. Well, I would not qualify that. That is supposition.

Q. Is not that one of your functions at merchandise manager, to see to it that your stock on hand does not exceed by too much the possible market for your sales? A. As far as I am concerned, my answer to that is, that it is the buyer's responsibility in selecting and buying such merchandise that she feels she can dispose of.

Q. You mean by that, that you permit your buyer to consistently buy either too much goods or too little goods, without any correction on your part? A. May it please the Court, I do not see that there is any record here that shows that the buyer consistently overbought.

Q. I am asking you that. I mean, suppose you noticed that a buyer, over a period of time, is buying a great deal of merchandise for a particular department, and, at the end of your accounting period, be it a week or a month, of the department—I believe you said you get your statistics every week—you find she has a surplus in that department.

Mr. Haycraft: Objected to; no foundation of fact in the record; problematic and suppositional.

Mr. Albert: I am sorry, if your Honor please, but I cannot quite see why Mr. Haycraft cannot distinguish what is a foundation question from what is not. It seems to me quite obvious that all of these questions are foundation questions themselves.

Mr. Haycraft: They are highly improper, if that is what they are intended to be. You do not base foundation questions on problems, suppositions, and so on.

Mr. Albert: That is all this witness has given us, is opinion based on supposition.

8140

Louis Liberman—For Commission—Cross.

Mr. Haycraft: That is your opinion, not mine.

Examiner Bennett: I don't get just what you are trying to test.

Mr. Albert: I will be glad to tell your Honor on the record.

Examiner Bennett: Well, that will be all right. I will be glad to have you do it.

(Thereupon a discussion was had off the record.)

Mr. Albert: What is the question?

(Question read by the reporter.)

By Mr. Albert.

8141

Q. (Continuing) What is your action with respect to that? I mean, don't you attempt to tell her, "Here, you are buying too much goods. Cut it down a bit"? A. Well, that is a matter of personal judgment. After all, we, as our capacity as merchandise managers, try to counsel the buyers, and direct them not to overbuy, or to have surplus stocks, and whatever commitments are made are based on past experience and plans for promotion of sales for the future.

Q. And that past experience of sales of stock is dependent—question withdrawn. What you mean by past experience of sales to stock is what you might generally term the industry as your past experience with the turnover? A. Past experience as it applies to the operation of the dress departments in Ed. Schuster & Company stores.

8142

Q. We are not talking about any other store, are we Mr. Liberman? A. What might apply to Milwaukee would not apply to Cincinnati, St. Louis or points South.

Q. You haven't given us any opinions on St. Louis or Cincinnati? A. No, but, after all, you are generalizing. You have mentioned Ed. Schuster & Company, you are generalizing on the general practices. I am confining my testimony to what applies to Ed. Schuster & Company.

Q. All right. Now, confining yourself to your testimony on what applies to Ed. Schuster & Company, have you, as divisional or merchandise manager of Ed. Schuster & Company, fixed upon any formula of turnover for your dress departments? A. We take past experiences of the departments in the matter of turnover, or endeavor to reach a certain medium.

Q. What would you say is the medium or the goal which you seek to have your buyers realize? Is it to turn over their stock once a month, or once a week? A. I haven't the figures available.

Q. I am not asking you what the figures are. I am asking you whether or not you, as merchandise manager of Ed. Schuster & Company, do not know what the goal of Ed. Schuster & Company is with respect to the turnover of stock in these departments, aside from what the actual figures are? A. I don't recall.

Examiner Bennett: He has answered "I don't recall."

By Mr. Albert.

Q. That does not vary from week to week, does it? A. That is a matter that is set up at the commencing of each year.

Q. When did you fix your goal for this year? A. In January, 1936.

Q. What was your goal? A. I don't know.

Q. Mr. Liberman, do you mean to tell this Court that, as merchandise manager of Ed. Schuster & Company, on so broad a proposition as what the goal of Ed. Schuster & Company is as regards the turnover of stock in its dress departments you cannot tell us what that is now? A. I so repeat.

Q. Do you think you could get that information from Mr. Keuchenmeister?

Mr. Haycraft: I object to that.

8146

*Louis Liberman—For Commission—Cross.**By Mr. Albert.*

Q. Who is in the room at present, and who, I believe, is your comptroller?

Examiner Bennett: The same instruction from the Examiner obtains as was given yesterday. That is to say, you are not under obligation, but you may do it as an accommodation if you care to.

The Witness: I would like to ask counsel of Schuster & Company if that question is in order?

Mr. Likert: The question is in order, but you may reply through me, or I will answer for the company.

8147

The Witness: That's right.

Mr. Likert: We do not have the figures available on what was the average turnover in the merchandise meeting of January, 1936, and we decline to present them.

By Mr. Albert.

Q. Mr. Liberman, I believe you stated that you became merchandise manager of Schuster & Company in the summer of 1935? A. That is right.

Q. And the previous merchandise manager is no longer with Schuster & Company? A. That's right.

Q. Do you know why he was removed? A. I do not.

8148

Q. Did you, upon taking over the position, investigate or compile any statistics with respect to the stock position of Ed. Schuster & Company at that time? A. I don't think the question is very clear. You mention "stock," but you don't say what stock.

Q. What stock would you think I was mentioning? A. I haven't any idea.

Q. It would not be men's clothing, would it? A. Possibly.

Louis Liberman—For Commission—Cross.

8149

Q. How? A. Possibly.

Q. It would not be your nick-nacks department, would it? A. I don't think the question is very relevant.

Q. Now, suppose we stop this foolishness, and realize that I am referring only to the dress departments and that is all that has ever been under discussion here. A. It is perfectly all right with me, if you had mentioned the dress department I would have answered to the best of my knowledge.

Q. You knew very well that that was all I was referring to. Would you mind answering the question now? A. Would you mind repeating the question?

(Last question read by the reporter.)

8150

The Witness: I can't recall.

By Mr. Albert.

Q. At the close of the six months period, on January 1, 1936, or January 31, 1936, did you compile any statistics with respect to the turnover of your stock from the time that you took over the departments, until that time, until January 31, 1936? A. Some figures may be on file in the comptroller's office.

Q. You do not recall them? A. That I had personally compiled such figures?

Q. Yes. A. I do not.

Q. Were they submitted to you? A. They were.

Q. Did you examine them? A. I did examine them.

8151

Q. Did you come to any conclusions as a result of examining those figures?

Mr. Haycraft: That is objected to; it is too indefinite; conclusions as to what

Mr. Albert: The man is a merchandise manager, has been for twenty-five years, looking at figures. I am asking him if he came to any conclusions with

8152

Louis Liberman—For Commission—Cross.

respect to the figures, and then I will find out what the conclusions are. When a man cannot tell me what his turnover is, I do not know whether he has come to any conclusions as a result of seeing figures.

Mr. Haycraft: I object.

Examiner Bennett: Overruled; he may answer.

The Witness: I believe it was not at all necessary to make any comparison of the figures under my management for the fall of 1935 to a similar period of 1934.

8153

By Mr. Albert.

Q. Now, as a result of your examination of the figures in the period, the latter half of 1935, in which undoubtedly the influence of Mr. Greenblatt was still felt somewhat—is that unfair?

Mr. Haycraft: I object.

The Witness: It is a fair question.

By Mr. Albert.)

Q. I mean, you would say that his influence was still felt in the department, as regards the purchases that had been made, and everything else, is that not so?

Mr. Haycraft: When?

8154

Mr. Albert: For that period.

The Witness: Well, it all depends on how—I am not familiar with how long Mr. Greenblatt remained, or what influence he had on early fall purchases.

By Mr. Albert.

Q. When you came into the department, your departments were stocked, were they not, when you took over in July?

Mr. Haycraft: Stocked with what?

Mr. Albert: Stocked with dresses, dresses—
is what we are talking about.

Mr. Haycraft: You mean stocked for fall?

The Witness: If I remember correctly that in the early fall—in placing purchases for fall of 1935 there was some labor unrest, and that there was strikes pending, to the best of my recollection; there was not only strikes in the industry, but also in the fabric, and dyeing mills.

By Mr. Albert.

Q. When was that? A. I believe the end—the summer of 1935. 8156

Q. Well, now, come back to the original question, Mr. Liberman, when you took over the departments in July of 1935, there were dresses in those departments were there not? A. There were.

Q. Whatever there were, they were purchased by Mr. Greenblatt, were they not—they had not been purchased under your supervision, had they? A. No.

Q. So that to that extent, the influence of Mr. Greenblatt was still felt in the department after you took over, is that not so? A. As far as the purchases that had been made?

Q. Yes. A. Previous.

Q. Of course, of course—but, of course, you adopted new policies new procedures, new methods and everything else, with respect to the department, is that not so? A. Naturally. 8157

Q. Now, at the end of your fiscal year, January 31, 1936—is that correct? A. Yes.

Mr. Haycraft: '36, you mean, do you not?

8158

*Louis Liberman—For Commission—Cross—Redirect.**By Mr. Albert.*

Q. 1936? A. 1936.

Q. Did you compute or compile any statistics for the purpose of determining what the turnover had been to the dress departments for that period, in order to formulate plans for the next six months which would be completely under your supervision, without any influence whatsoever from the previous merchandise manager insofar as the purchase of merchandise was concerned? A. I personally did not compile any such figures.

Q. Were they compiled for you? A. I do not know.

8159

Q. You never saw such figures? A. I never saw such figures.

Q. Then you do not know what your turnover is for the previous six months? A. I do not.

Q. To February 1, 1936? A. The fall of 1935.

Q. Right, for that period? A. Right.

Q. Ending January 31, 1936? A. That's right.

Q. And you do not know, and never did know, the relationship between your stock on hand and your sales for that period? A. I do not.

Q. Because that would be what the turnover would be is that not correct? A. That's correct.

Mr. Albert: That is all, your Honor.

Examiner Bennett: All right, any re-direct?

Mr. Haycraft: Yes, I have some.

8160

Redirect examination by Mr. Haycraft.

Q. You were asked a number of questions on cross-examination as to the designation "little women's dresses," and as to whether or not that designation was synonymous with half sizes in the trade. I will ask you whether or not the designation, or the term, "little women's dresses" would include only half sizes or would it include other

sizes? A. It also included little women's, big women's—
or large women's dresses, half sizes, in the same classifica-
tion.

Mr. Haycraft: Read the question.

(Last question read by the reporter.)

Mr. Haycraft: I am referring now to little women's.

The Witness: Well, there is a size range there that can best be identified by—some of the manufacturers use the twelve and a half to the twenty and a half, and then there is, I believe, another range that starts at twenty-two and a half to twenty-six and a half. Now, in that same category, you will find other manufacturers that will start at $34\frac{1}{2}$, which is an irregular—that is away from the regular sizing, and fits a type of woman that is not normal figure, and then $34\frac{1}{2}$ will run all the way up to 52, $54\frac{1}{2}$.

8162

By Mr. Haycraft.

Q. In your opinion, would the term "little women's dresses" apply to a dress of size $54\frac{1}{2}$?

Mr. Albert: Or is that for two women?

The Witness: You will find some manufacturers that will sell you anything from an infant's dress up to a $54\frac{1}{2}$, short, long, broad or square, any way you want to put it.

8163

By Mr. Haycraft:

Q. On page 4562, this question was asked you: "Now, in that element of timing, would you say that Schuster & Company looks to Guild manufacturers to first present the styles that Schuster & Company thinks it needs?" And your reply was: "I do." I will ask you now whether or

8164

Louis Liberman—For Commission—Redirect.

not the Schuster & Company looks only to Guild manufacturers to first present the styles that Schuster & Company thinks it needs? A. I would like to confirm that statement that there are other factors, elements of factors that present merchandise at the start of the season.

Q. On page 4571 of the record you were asked this question: "Have you had a copy sufficient to resemble, to use your term, the original dress from which it was copied?" And you replied: "We may have." The next question was asked: "And to create confusion in the public mind?" A. That has appeared, yes. Q. Now, in so far as that definition of copy is concerned, isn't and wasn't that an evil in the industry? A. I believe it was an important factor.

8165

Now, I will ask you to explain what you meant when you said you believed it was an important factor? A. That in the copying of higher-priced dresses, speaking specifically in \$16.95, retail, and up; there is one—my reaction to the forming of the Guild was to endeavor to curb the copying of merchandise sold in the higher brackets.

Q. Well, have you heard the term "style piracy" used in the industry? A. I have.

Q. Do you understand what it means? A. As far as I am concerned?

Q. Yes. What is style piracy? A. As far as I am concerned, I do not recognize the term "style piracy."

Q. You do not recognize it? A. No.

8166

Q. Why do you not recognize it? A. For the simple reason that there may be adaptations, or copies made of certain pertinent fashions that have developed in a season, and are brought into price levels that meet the needs, or the—of women and misses, at a point, or at a price line that they can buy dresses. I maintain that that is not a copy. Any trend that might develop, and that can be capitalized upon, measured by factors, redistributed by retailers, I do not consider as a copy.

Q. Well, do you consider that style piracy? A. I do not.

Louis Liberman—For Commission—Redirect—Recross.

8167

Q. Do you consider it an evil in the industry, those practices just referred to? A. There is all types of industries.

Q. Well, I will say—

Mr. Albert: (Interposing) Dress industry.

By Mr. Haycraft.

Q. (Resumed) —dress industry.

Mr. Albert: (Interposing) Mr. Liberman, d-r-e-s-s.

By Mr. Haycraft.

Q. I will refer first to the retail dealers, as to the retail end of the dress industry. A. There are certain price levels at which dresses are produced, that, in my estimation, does not conflict.

8168

Q. Will you explain what you mean by that? A. I mean that a dress produced at \$3.75 cost, has no relationship to a dress that costs \$10.75 or \$6.75.

Q. How about the higher brackets? A. The higher brackets, would, I feel, the same—that when you reproduce a dress, or reproduce certain fashions, fashions or trimmings or high-lights of a high style garment, that you take something out of it, when you try and reproduce it for less money.

Q. Do you recognize that as style piracy, that practice?

A. I do not.

8169

Mr. Haycraft: That's all.

Recross-examination by Mr. Albert.

Q. Mr. Liberman, you have been in this business twenty-five years? A. As far as dresses are concerned, yes.

Q. You have testified that certain manufacturers make original dresses, better dresses? A. I don't know how

8170

Louis Liberman—For Commission—Recross.

original they are, but they make dresses we are anxious to get and sell.

Q. I believe you have also testified that there are some manufacturers who copy those better dresses, whatever that may be? A. That may be a practice in the industry, yes.

Q. Is it or isn't it a practice in the industry, from your twenty-five years of contact with it? Don't you know whether it is or not?

Mr. Haycraft: I object to the form of the question, and the attitude, the menacing attitude of the cross-examiner. This is not a police court.

8171

Mr. Albert: I haven't picked up a chair yet, I am not menacing yet.

Mr. Haycraft: This is not a police court.

Mr. Albert: The witness is perfectly capable of protecting himself.

Mr. Haycraft: He should not be required to.

Examiner Bennett: He may answer.

The Witness: I believe it has been so recognized.

By Mr. Albert.

Q. Don't you recognize it as such, and haven't you come in contact with it? A. It all depends. I would like to clarify this situation, as far as I am concerned.

8172

Q. Go ahead, clarify it. A. I claim, and I have given testimony here this morning, relative to what I consider is a copy, and the relationship to so-called style piracy. I don't think it is necessary to elaborate on that statement.

Q. Let me be the judge of it, and the Court, if you don't mind. A. That is my own opinion. Of course, I can be overruled.

Q. Now, from the \$10.75 price line up, in your experience, isn't it a fact that whatever the original source-

be, there are manufacturers who make a practice of copying the design of better dresses manufactured by the better manufacturers? Isn't that so? A. That is true.

Q. Do you subscribe to the honesty of such a practice?
A. That is a matter of personal opinion.

Q. Do you think that is honest? A. It is all a question of what he steals out of that dress, as you term it.

Q. He steals the better dress in such a fashion as to affect the value of the better dress?

Mr. Haycraft: That is assuming a fact not in evidence.

By Mr. Albert.

8174

Q. Isn't that so?

Mr. Haycraft: I object to that question.

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

Q. When a manufacturer copies a better dress, and attempts to sell that copy at a lower price, in what manner is the value of that better dress affected?

Mr. Haycraft: If any.

Examiner Bennett: There is no testimony from this witness that it is affected. I think his testimony is to the contrary.

Mr. Haycraft: I object to the question.

8175

Examiner Bennett: Unless you lay a foundation that it does affect it, whether in his opinion it does affect it.

By Mr. Albert.

Q. Does it affect the value, Mr. Liberman, from your experience? A. It is all a matter of how the term so-called

8176

Louis Liberman—For Commission—Recross.

original—what it has in it. I have gone on record here in a number of cases the past two days, that when they take out certain fashion points of a dress, that they decrease the value of the original.

Q. All right. Will you agree with me that, to the extent that they copy this better dress, these manufacturers who do the copying are appropriating the work, the brain-child, the inspiration, or genius, anything you want to call it, of this better dress house? Isn't that so, generally speaking?

A. May I have the question?

Mr. Albert: Read the question.

(Question read by the reporter.)

8177

The Witness: What information have I that this so-called brain-child of a manufacturer is an original?

By Mr. Albert.

Q. Wherever the better dress manufacturer may have gotten the inspiration for his dress, will you admit that the copying manufacturer did not get the same inspiration, but merely copied what the better dress manufacturer had put into his dress?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let him answer.

8178

Mr. Haycraft: It is an assumption, Mr. Examiner. It is not in accordance with the record in this case.

Examiner Bennett: Well, the witness' answer will not agree with it, if that is so.

Mr. Haycraft: I don't think I got the answer.

Examiner Bennett: He has not answered yet.

By Examiner Bennett.

Q. Can you answer the question? A. May I hear the question again, please?

Q. (Question read by the reporter.) A. That would be a supposition on my part.

By Mr. Albert.

Q. From your twenty-five years' experience in the industry, you cannot give me a better answer than that, definitely, one way or the other? A. I still stand on my statement.

Q. Mr. Liberman, if you had a twenty-five dollar dress in your better dress department, and a copy of that dress was being sold at \$10.75, in what way, if at all, would the value of that dress to you be affected?

Mr. Haycraft: Objected to. It is too indefinite as to what he means by "copy."

8180

By Mr. Albert.

Q. Do you know what I mean by "copy"?

Mr. Haycraft: There are two or three different kinds of copies that have been mentioned here today and yesterday.

Examiner Bennett: I will overrule the objection, if you want to answer that question, if it is affected at all. If it is not affected, that is something else.

The Witness: I am still of the opinion, and maintain, that when you have a dress that cost \$10.75—did you mention retail?

8181

By Mr. Albert.

Q. Selling at \$25.00 retail in your store, and selling at \$10.75 retail some place else, a dress is a copy, how does that affect the sale of your dress or the value of your dress to you? A. I still maintain that such a dress that

8182

Louis Liberman—For Commission—Recross.

may have the earmarks of being a copy of the original style is only worth what you pay for it, what the customer pays for it.

Q. But, as a matter of fact, when your customer buys that \$25 dress in your store, and then goes out and sees the copy some place else for \$10.75, can you, from your experience with Schuster & Company, tell us what that customer does? A. I cannot.

Q. You cannot tell it one way or the other? A. It would be only an opinion, and I am not here to try to read customers' minds.

8183

Q. As a matter of fact, when such an event occurs, doesn't your customer come back to you and complain that she is sore, that the dress she purchased in your store for \$25.00 she can purchase some place else for \$10.75? A. I have heard of such cases.

Q. Doesn't that happen many times, whenever a copy is discernible by a customer? A. I have heard of such cases.

Q. As a result of that, don't you have to make some sort of an adjustment with that customer? A. Not necessarily.

Q. But, do you? A. I don't know.

8184

Q. Did you ever make an adjustment with a customer as the result of such a statement by her? A. I believe it is the practice on the floor, whenever such instances are brought to the mind of the sales person or the floor walker, they are to explain the difference between a dress retailing at \$10.75 and a dress retailing at \$25.

Q. What is the explanation that they give? A. I am not aware of that.

Q. Don't you know what your sales girls do? A. I have heard it stated that after all they explain the differences. You cannot qualify a dress retailing at \$10.75, that it is going to be the same dress retailing at \$25. It is inconsistent.

Q. But they at least attempt to explain to the customer "Yes, Mrs. So-and-So, this dress looks like ours, but here is a difference, and here is a difference." Is that what they do? A. I have never been present when such an adjustment was made.

Q. Have you made any investigation in your store, as to what is going on in that respect, in order to please your customers? A. We have a board of services for such purposes.

Q. And you have no duties in connection with that whatsoever? A. That is a matter of store policy.

Q. As a result of this customer complaint, did you ever have to mark down your better dress prices? A. Not to my knowledge.

8186

Q. Never? A. Never. I would like to supplement that statement; never had to mark down that dress because there was a copy selling for \$10.75.

Q. You had to mark it down because you could not sell it, is that it? A. In the course of time.

Q. Isn't that because of the fact the customers were seeing the copy some place else, and would not pay Schuster's \$25 for something they could get somewhere else for \$10.75? A. Not necessarily.

Q. You don't know? A. It is not a question of knowing or not. You can buy plenty of dresses retailing for \$25.00 from Guild houses, too, the same as you can at a hundred.

Q. If you could not get rid of a dress at \$25, and you knew that a copy of that dress was selling for \$10.75 in the town, what would you think was the reason for failing to sell that \$25 dress, based on your experience? A. I still maintain that the intrinsic value of that dress when originally purchased at \$25 is good, it still has a \$25 value to the customer who is willing to accept it.

8187

Q. To the customer who is willing to accept it? A. Yes.

Q. But you do not have those customers, do you? Because if you did, you would not have the dress in your stock over that period of time, would you? A. That is entirely irrelevant, and supposition on the part of the respondents' attorney.

Q. After twenty-five years in the industry, that is the best answer you can give me as to why merchandise remains on hand when you know something cheaper is sold, that looks like your dress? A. That is your supposition.

Q. I am asking you, is that your answer? A. No, it is not.

Q. What is your answer, then? A. It is in the testimony they have. Make the most of it.

8189

Q. Then, the answer that you have given is the best answer, isn't it? A. I still let my testimony stand.

Q. As a matter of fact, from your knowledge of the industry, conceding that your \$10.75 dress or your \$25 dress is intrinsically of that value, and conceding that lower price copy is intrinsically worth no more than they are attempting to sell it for, isn't it a fact that, in so far as the customers are concerned, a customer will see the \$25 dress in the window of your store, let us say, and also see that \$10.75 copy in the window of another store in the town and she will come into your store and say, "I saw the two dresses together. Why is it that you sell yours for \$25 and I can get it in the other store for \$10.75?"

8190

Mr. Haycraft: That is objected to. How could she see the two dresses together?

Examiner Bennett: I will sustain the objection. I think you have gone into this matter to the full extent proper with this witness.

Mr. Albert: Very well, your Honor, if you feel that way.

Examiner Bennett: It seems to me you have been going in circles now for some time.

Louis Liberman—For Commission—Recross.
Walter L. Rowse—For Commission—Direct.

8191

Mr. Albert: Very well, your Honor, if you feel that way about it, I will discontinue. That's all.

Mr. Haycraft: That's all.

(Witness excused.)

WALTER L. ROWSE was thereupon called as a witness for Commission and, having been first duly sworn, testifies as follows:

Direct examination by Mr. Haycraft.

8192

Will you state your name? A. Walter L. Rowse.

What is your occupation, Mr. Rowse? A. Merchant-manager; divisional merchandise manager.

For what firm? A. The Boston Store, Milwaukee; probably Herzfeld-Phillipson & Company, which we are in.

Which you are what? A. A. Well, the Herzfeld-Phillipson Company, operating the Boston Store in Milwaukee.

You are now general merchandise manager, you say? No, not now.

What is your position? A. I am divisional merchant-manager.

What does "style piracy" mean?

8193

Mr. Albert: That is objected to, no foundation has been laid.

Examiner Bennett: Do you know what it means?

The Witness: I really—have my opinion.

Examiner Bennett: All right, if you want to have his opinion.

8194 *Walter L. Rouse—For Commission—Direct.*

By Mr. Haycraft.

Q. What is your understanding of the term "style piracy" as used in this letter?

(Counsel refers to Commission's Exhibit 557.)

Mr. Albert: Objected to as incompetent, immaterial, no foundation has been laid.

Examiner Bennett: I will overrule the objection.

Mr. Albert: Exception.

The Witness: Read the question, please.

(Last question read.)

8195

The Witness: As I understand, by style piracy is when one manufacturer copies exactly a garment that was designed and created by another manufacturer.

By Mr. Haycraft.

Q. Now, the next sentence in this first paragraph: "Believing the principles declared by your members to be proper for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed business policy." Did you read that before you signed this letter?

Mr. Albert: Now, if your Honor pleases—

The Witness: Yes.

8196

By Mr. Haycraft.

Q. What is your understanding of "the protection to the public" that will grow out of the principles declared by the members of the Fashion Originators Guild? A: Will you repeat that question please?

Q. (Last question read.) A. I don't know of any protection to the public.

Q. What was the protection to the retailer? A. The protection to the retailer was assumed that a garment would not be sold at a lower price in a competitive store and thereby causing a necessary mark-down in the store that had the original.

Q. Were you familiar with the manufacturers of womens' dresses that were members of the Guild at the time you signed this declaration? A. To a great extent.

Q. And what price lines did they manufacture? A. \$16.75 cost and up.

Q. And approximately what price range were these dresses manufactured—cost price range—sold by retailers including your own store? A. I did not get the question.

Q. At approximately what price range prices were the garments sold that cost from \$16.75 up? A. The garments that cost \$16.75 were sold usually at \$25 and \$29.75.

Q. And the next paragraph says: "We do not and will not buy for our ready-to-wear departments any copied or pirated dresses of garments created by members of your association." Do you understand the meaning of the words: "copied or pirated"—to be synonymous, or otherwise? A. I presume they were synonymous.

Q. Was the definition which you gave a moment ago of style piracy your understanding of what a copied or pirated dress was? A. That's right.

Q. The balance of the declaration reads as follows: "Furthermore, we will affix to all of our apparel orders the following clause:—'This order is placed upon the seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted.'" Do you recall whether or not the Boston Store followed the policy of placing that warranty on all orders? A. That was our practice and I don't know of any exceptions.

8200

Walter L. Rowse—For Commission—Direct.

Q. Do you know whether or not, as a matter of fact, the Boston Store did return to manufacturers garments because they were alleged to be copies or because they were declared to be copies?

Mr. Albert: May I make inquiry of counsel for the Commission as to whether or not he intends to offer in evidence the sheet of paper that he tore off Commission's Exhibit 557?

Mr. Haycraft: You can ask all the questions you want, but I do not intend to answer them.

8201

Mr. Albert: Now, may I point out to the Court that in the presentation of Commission's Exhibit 557 there was physically attached to that paper another sheet of paper, by reason of which both sheets of paper became one. I made no objection to its being torn off at that time, because I assumed in the ordinary course that the paper to which it was attached, which was offered, would either be referred to by Mr. Haycraft in some manner, or would be offered in evidence.

8202

I now see that Mr. Haycraft is going on to another subject. He has not offered this other sheet in evidence, and in addition, is so discourteous as to not even wish to answer me as to what he did when he tore a sheet of paper off something that is now in evidence, and I ask the Commission, I ask the Court, in the exercise of its discretion to ask Mr. Haycraft what that sheet of paper was and what its connection is with a matter now in evidence from which it has been torn off.

Mr. Haycraft: I do not mind telling the Court anything, but I decline to discuss the matter with counsel for the respondent.

Examiner Bennett: What document do you refer to? Have you the number?

Mr. Albert: There was a sheet of paper physically attached to Commission's Exhibit 557, which is the declaration of co-operation which was signed. I very frankly state to the Court that I do not know what that paper was, but the fact remains that it was physically attached to a paper now in evidence, and by reason thereof constitutes the same exhibit, in general language, and I believe that the respondents and the Court should be informed of why Mr. Haycraft mutilated a paper which he subsequently put in evidence, before he put it in evidence. I believe we are entitled to see that.

8204

Mr. Haycraft: The paper was not mutilated.

Examiner Bennett: As I understand it, that that one sheet alone was offered in evidence? I am not going into that controversy now.

Mr. Albert: I ask the attorneys for the Commission to produce and to mark for identification the sheet of paper that was attached to Commission's Exhibit 557, and if not, I ask that Commission's Exhibit 557 be stricken from evidence as a mutilated document which is not in the form that it was when it was in the Commission's possession.

Examiner Bennett: Denied.

Mr. Albert: Exception.

Mr. Haycraft: At this time, in view of the statement made by counsel for the respondents, I demand the production of the original of this declaration of co-operation—

8205

Mr. Albert: That has nothing to do with it.

Mr. Haycraft: —to take the place of this copy.

Mr. Albert: He tore something off the exhibit which he put into evidence, and he has not even the courtesy to show the Commission what it was

8206

Walter L. Rowse—For Commission—Direct.

or why he tore it off. The fact that he wishes to conceal that makes me more insistent to know what it is he is concealing—

Mr. Haycraft: (Interposing) Mr. Examiner—

Mr. Albert: (Interposing) —It would be a very simple thing for him to say that it had nothing to do with it.

Mr. Haycraft: Mr. Examiner, I told you I would be glad to show you the piece of paper.

Examiner Bennett: That is the end of this controversy. You may produce the original of this document. If you wish to show just what the document was that was signed. If you have any papers attached to it which modifies it, why, that is all right. The only thing that was offered here was that one sheet of paper. The only thing that was marked was that one sheet of paper. There is nothing else in controversy.

Mr. Albert: If your Honor pleases, may I point out, that in the very reasonable expectation that Mr. Haycraft was going to mark the paper which was attached to it I made no reference to it whatsoever.

Examiner Bennett: There are a thousand different ways in which papers can get attached to one another in a file, and I am not going into it. I am not going into that sort of imagined suspicions.

Mr. Albert: If it please the Court, I have no objection to the record remaining exactly as it is. If Mr. Haycraft refuses to give an explanation of why he tore a paper off and offered only one in evidence. If that is his conception of his duties to the Court that is perfectly satisfactory to me.

Mr. Bennett: All right.

8207

8208

Mr. Haycraft: I think there was a question pending, but you may strike it out; I will start over again.

By Mr. Haycraft.

Q. Directing your attention to Commission's Exhibit No. 557, I will ask you to testify at this time as to the reasons that prompted you to sign that declaration as representing the Boston Store?

Mr. Albert: That is objected to as incompetent, immaterial and irrelevant, at the present time, not within the issues of the Commission's complaint.

Examiner Bennett: Overruled; you may answer.

8210

Mr. Albert: Exception. No foundation has been laid that this witness knows the reasons why it was signed, your Honor.

Mr. Haycraft: The witness signed the paper, Mr. Examiner.

Examiner Bennett: All right.

Mr. Albert: And Mr. Haycraft was very definitely attempting to prove that he did not even know what he was signing.

The Witness: Will you read me the question now?

(Last question read.)

The Witness: My understanding was that unless we signed this declaration we would not be permitted to buy merchandise, and use the lines offered by the members of the Fashion Originators Guild, by the manufacturers who are members of the Fashion Originators Guild.

8211

Mr. Albert: May I ask that the answer be repeated, your Honor? I did not follow it.

(Answer read.)

8212

Walter L. Rowse—For Commission—Direct.

(Thereupon a paper was marked Commission's Exhibit 558^b for Identification.)

By Mr. Haycraft.

Q. What is this paper that I hand you now (indicating)? A. This is a report of the garments returned to manufacturers that were adjudged copies by the Fashion Originators Guild.

Q. Was that prepared under your direction, or under your supervision, in any way? A. It was prepared in our control office.

8213 Q. And furnished by your control office to you? A. To me, yes.

Q. Did you have anything to do with the returning of the garments during the period of time that you were divisional merchandise manager of the ready-to-wear department? A. All returns made to the manufacturers were authorized—had to be authorized by myself, or whoever was representing me while I was out of the city.

Q. Have you checked this exhibit against the original orders to determine the correctness of the exhibit? A. Our office has done that.

Q. Yes, and you are satisfied it is correct? A. It is correct, as far as—

8214

Mr. Haycraft: I offer this in evidence, Mr. Examiner, and wish to state at this time that I have the original orders upon which that is based, and if counsel for the respondent wishes to check it—I do not wish to encumber the record—

Examiner Bennett: Yes, I understand.

Mr. Haycraft: —with foundation documents.

Mr. Post: Mr. Haycraft, what is the original returns?

Mr. Haycraft: I should say "returns." The proper title of these documents that I have here,

Walter L. Rowse—For Commission—Direct.

8215

understand, is the authority for return of merchandise.

Mr. Albert: May I see just one of them, Mr. Haycraft?

Mr. Haycraft: Yes (handing paper to counsel).

Mr. Albert: And that is a representation of all of them?

Mr. Haycraft: Yes.

Mr. Albert: May I suggest that you put in evidence one of these charge-outs, in order that we can see the general form of them?

Mr. Haycraft: I have no objection.

(Thereupon a paper was marked Commission's Exhibits 559-A and B for Identification.) 8216

Mr. Albert: I have no objection to Commission's Exhibit 559 going in evidence as a form of charge-out used by the Boston Store with respect to the returns listed on Commission's Exhibit 558, but I object to Commission's Exhibit 558 upon the ground that no proper foundation has been laid.

Mr. Haycraft: Then I withdraw the offer of Commission's Exhibit 559, if that is not a proper foundation. I did that to assist in the proper foundation. If there is an objection to Commission's Exhibit 558, I withdraw Commission's Exhibit 559.

Mr. Albert: What are you doing, bargaining with me? 8217

Examiner Bennett: Are you offering Commission's Exhibit 558?

Mr. Haycraft: I am offering Commission's Exhibit 558.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 558, was received in evidence.)

8218

Walter L. Rowse—For Commission—Direct.

Examiner Bennett: We will take a recess of ten minutes.

(Thereupon a short recess was taken.)

Examiner Bennett: Be in order, please.

By Mr. Haycraft.

Q. Mr. Rowse, what was the policy of the Boston Store with respect to the placing of warranty stamps on orders for merchandise, during the year, immediately after the signing of the declaration, and for some time up through the year of 1934 and beginning of 1935? A. As quickly as we received the stamp, the rubber stamp that was made
8219 for that purpose, we affixed that stamp to all of our orders.

Q. You mean that the orders for dresses in your departments? A. In our departments.

Q. The department over which you have supervision?

A. That's right.

Q. Does the—

Mr. Albert: (Interposing) Now, if it please the Court—

By Mr. Haycraft.

Q. (Resumed) —Boston Store—

8220

Mr. Albert (interposing): May I ask that the answer be stricken, and will you wait, Mr. Haycraft until I complete my objection before you put a new question? I ask that the answer be stricken as not responsive to the question. The witness was asked as to what the policy of the Boston Store was and the answer was with respect to his department.

Mr. Haycraft: That is all right. What is wrong with that?

Examiner Bennett: Yes.

Mr. Albert: What you wanted was the policy of the Boston Store in all the departments?

Mr. Haycraft: I know what I wanted.

Mr. Albert: And not his department.

Mr. Haycraft: I know what I want and know I get interrupted.

Mr. Albert: I place my objection.

Examiner Bennett: He may answer.

Mr. Albert: Exception.

By Mr. Haycraft.

Q. Does the Boston Store have a basement store, or another department outside of those two which you have supervision over, in which dresses are sold, women's dresses? A. The only departments that I had supervision of were the upstairs departments.

8222

Q. And of those that you have named and given description of in your earlier testimony, does that include all those or were some of those in the downstairs department?

A. The departments I mentioned are all upstairs departments.

Q. How did you determine what garments were to be returned to the manufacturers?

Mr. Albert: That is objected to, if it please the Court, as no proper foundation has been laid. There is no evidence before the Court that he did determine that garments should be returned.

Examiner Bennett: Overruled; you may answer.

Mr. Albert: Exception.

8223

The Witness: The garments to be returned to manufacturres were reported to our buyer by the Fashion Originators Guild shopper in our city.

By Mr. Haycraft.

Q. Do you know whom she was? A. They were different—there were three different ones that I can remember of.

8224

Walter L. Rouse—For Commission—Direct.

Q. Do you have any knowledge as to the procedure followed by the shopper in your store in that respect? A. To my best knowledge, the only request we had to make returns would be when the shopper would receive a report from the New York Guild office, usually showing a sketch of a garment that was reported to be a copy, and she would inquire of our buyers if we had any of these garments in our stock, and our buyers would either know or look to see, and they would tell the shopper whether we had or not. If we had them, the shopper asked us to return them, and they were returned.

8225

Q. Now, with respect to Commission's Exhibit No. 558 were the returns made to the manufacturers named therein, the vendors named therein, pursuant to the arrangement that you have just described? A. I don't know.

Q. In other words, did you return any garments to these manufacturers, as described on this exhibit, which were not called to your attention by the Guild shopper? A. To the best of my knowledge, we never returned any garments to the manufacturers unless requested by the shopper.

Q. That is for the reason that they were copies of Guild dresses? A. That is right.

Q. Now, was there any change in the policy with respect to returns of copies of Guild merchandise during the time that you were in charge of the ready-to-wear division?

8226

Mr. Albert: That is objected to as incompetent and immaterial, not within the issues of the Commission's complaint.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: You may answer.

The Witness: There was no change in our policy regarding returns.

Walter L. Rouse—For Commission—Direct.

8227

By Mr. Haycraft.

Q. Did you issue any instructions to the buyers of your division, ready-to-wear division, with respect to the placing of orders for merchandise as to the purchasing of copies of Guild manufacturers' merchandise? A. Our instructions to our buyers were to place the Guild stamp on all orders.

Mr. Albert: I object to it, if the Examiner please, and ask the answer be stricken as not responsive.

Examiner Bennett: I am going to deny the motion.

8228

By Mr. Haycraft.

Q. Did you give any other instructions to your buyers? A. Pertaining to what?

Q. Pertaining to the purchase of garments from manufacturers outside the Guild, as to the purchase of garments that were copies of Guild garments, garments manufactured by Guild manufacturers. A. There were no definite instructions given.

Q. Did you contact the officials of the Fashion Originators' Guild, with respect to the policy of your store, or the policy of the Guild to be carried out through your store?

Mr. Albert: That is objected to, may it please the Court. Commission's Exhibit 557 in evidence speaks for itself as to what the Boston Store is supposed to do and pledged itself to do.

8229

Examiner Bennett: Overruled.

By Mr. Haycraft.

Q. You may answer. A. Read the question.

Mr. Haycraft: Read the question.

(Question read by the reporter.)

The Witness: We did not contact the Guild.

8230

*Walter L. Rowse—For Commission—Direct.**By Mr. Haycraft.*

Q. Directly or indirectly? A. The Guild representative called on us several times, but there was no specific discussion, except that he clarified some of the Guild regulations.

Q. Do you know a man by the name of H. O. Bergdahl?
A. I do.

Q. Who is he? A. He is the merchandise manager of the ready-to-wear division of the Associated Merchandise Corporation.

Q. What is that organization? A. That is an association of retail stores.

8231

Q. Does the Boston Store belong to it? A. The Boston Store belongs to it.

Q. How long has it belonged to it? A. May I ask information of my comptroller?

Mr. Vogt: December, I would say December, 1933 or January, 1934. We got into the A.M.C. in December, 1933, but the membership might have become effective as of January 1, 1934.

By Mr. Haycraft.

8232

Q. Did you authorize Mr. Bergdahl or anyone in his organization to make contacts with the Guild on your behalf in determining the policies of the Guild and interpreting those policies?

Mr. Albert: That is objected to, may it please the Court, no foundation laid, no evidence presented thus far that Mr. Bergdahl contacted the Guild on behalf of this store or a manufacturer on behalf of this store.

Examiner Bennett: He may answer.

Mr. Albert: The question assumes a state of facts not in the evidence.

By Mr. Haycraft.

Q. You may answer. A. Will you read the question?

Q. (Question read by the reporter.) A. We authorized Mr. Bergdahl to represent us at discussions in connection with the group.

Q. You mean discussion with the Associated Merchandise Corporation or with the Guild? A. In discussions with the Guild.

Q. And did Mr. Bergdahl make reports to you of such contacts that he made? A. He did.

Mr. Haycraft: I will ask that these documents be marked, respectively, for identification, Commission's Exhibits 560, 561, 562-A and B, 563-A and B, and 564.

8234

Examiner Bennett: Very well.

(The documents referred to were marked Commission's Exhibits 560, 561, 562-A and B, 563-A and B, and 564, respectively, for Identification.)

By Mr. Haycraft.

Q. Do you know Mr. Vactor Chambers? A. I do.

Q. Who is he? A. Mr. Bergdahl's assistant.

Mr. Haycraft: I will ask this be marked 565-A and B for Identification and that this document be marked Commission's Exhibit 566 for Identification; also, this one, Commission's Exhibits 567-A to E for Identification.

8235

(The documents referred to were marked Commission's Exhibits 565-A and B, 566, and 567-A to E, respectively, for Identification.)

8236

*Walter L. Rowse—For Commission—Direct.**By Mr. Haycraft.*

Q. I show you Commission's Exhibit 560 for Identification and ask you if you can identify that. A. I received this letter.

Q. Did you receive it? A. Yes, sir.

Q. To whom is it addressed, and the date of it, and who signed it, or sent it to you? A. It is addressed to Mr. W. L. Rowse, Boston Store, April 10, 1935, signed by H. O. Bergdahl.

Q. I show you Commission's Exhibit 561 for Identification and ask you if you can identify that in any way? A. I can.

8237 Q. What is it? A. It is a letter addressed to W. L. Rowse, dated April 15, signed by H. O. Bergdahl.

Q. Did you receive that? A. I received it.

Mr. Albert: What year?

Mr. Haycraft: 1935.

Mr. Albert: May it please the Court, may I ask if Mr. Haycraft is going to offer these in evidence, in order to facilitate matters, that they be offered one at a time, rather than seven or eight or a dozen at one time?

By Mr. Haycraft.

8238

Q. I show you Commission's Exhibits 562-A and B for Identification and ask you if you can identify that?

Mr. Albert: If it please the Court, may I have a ruling upon my request?

Examiner Bennett: Well, I am not going to instruct him. At least, it would take a great deal more time.

The Witness: This letter was addressed to me and I received this letter.

Walter L. Rouse—For Commission—Direct.

8239.

By Mr. Haycraft.

Q. Who is it from? A. H. O. Bergdahl.

Q. The date of it? A. It is dated May 13, 1935.

Q. I show you Commission's Exhibits 563-A and B for Identification and ask you if you can identify that? A. I received this letter, addressed to me, dated July 3rd, signed by H. O. Bergdahl.

Q. What year? A. 1935.

Q. I show you Commission's Exhibit 564 for Identification and ask you if you can identify that? A. I can.

Q. What is it? A. It is a letter addressed to Mr. N. B. Goldstein, dated October 4, signed by Mr. H. O. Bergdahl; and this letter was forwarded to me by Mr. Goldstein.

8240

Q. Give the date of it. A. The date is October 4, 1935.

Q. I show you Commission's Exhibits 565-A and B for Identification and ask you if you can identify that? A. I received this copy of the letter.

Q. From whom? A. It is a copy of a letter addressed to Mr. Vactor Chambers, dated November 19th, 1935, signed by Albert M. Post.

Q. I show you Commission's Exhibit 566 for Identification and ask you if you can identify that? A. I can identify this letter. It is addressed to me, dated November 25, 1935, signed by H. O. Bergdahl.

Q. I show you Commission's Exhibits 567-A to E and ask you if you can identify that? A. I can identify this letter. It is addressed to me. It is dated November 27th, 1935, signed by the initials of H. O. Bergdahl.

8241

Q. You received it, did you? A. I received it.

Q. To what subject matter, generally, do these letters relate?

Mr. Albert: That is objected to, if your Honor please.

Mr. Haycraft: It is a matter of identification, Mr. Examiner.

8242

Walter L. Rowse—For Commission—Direct.

Mr. Albert: It is not identification, telling us what the substance is. He has identified what they are and that he received them.

Mr. Haycraft: I did not ask him for the substance. I asked him for the subject matter referred to in these letters.

Mr. Albert: I would like to know what the difference is between the substance and the subject matter.

Mr. Haycraft: Go to school, and learn the English language and you will know.

Examiner Bennett: He may answer.

8243

The Witness: These letters are with reference to Guild matters, Fashion Originators Guild.

By Mr. Haycraft.

Q. Were they received in the ordinary course of your business relations? A. They were received in the ordinary course of business.

Q. Did you take any action, in your official position with the Boston Store, upon receipt of these letters? A. If action was required, it was taken.

Q. Were these letters taken into consideration in determining the policy of the Boston Store?

8244

Mr. Albert: That is objected to as immaterial, if your Honor please, referring to something not in evidence.

Examiner Bennett: I will sustain the objection. If you are going to offer them, offer them; if not we had better have an end to the whole business.

Mr. Haycraft: Very well. I will offer them in evidence at this time.

Mr. Albert: I am glad the Commission has finally disclosed that the A.M.C. had something to do with this case.

Mr. Haycraft: I move that that statement be stricken from the record.

Examiner Bennett: It may be stricken.

Mr. Haycraft: At this time, Mr. Examiner, I suggest that we take a recess until 2 o'clock.

Examiner Bennett: All right.

Mr. Haycraft: I shall be glad to allow counsel for the respondent to have access to these exhibits during the noon hour, if he wishes.

Mr. Albert: That is very, very kind and considerate of Mr. Haycraft, but I prefer to have lunch during the noon hour.

Mr. Haycraft: Very well. Then I withdraw the offer.

8246

Examiner Bennett: We will remain in session, then, seven or eight minutes.

(Short interruption.)

Examiner Bennett: We will take a recess until 2.00 o'clock.

Mr. Albert: May I point out to the Court that I have handed back to Mr. Haycraft the exhibits, all of the exhibits?

(Whereupon, at 12.30 o'clock P. M., August 27, 1936, recess was taken until 2.00 o'clock P. M., of the same day.)

8247

AFTERNOON SESSION—2 P. M.

Examiner Bennett: Be in order, please.

Mr. Albert: If it please the Court, the respondent has no objection to Commission's Exhibits 560, 562-A and B, 563-A and B, 564, 565-A and B, 566, and 567-A to E, going into evidence as communications between the Boston Store and the Associated

8248

Walter L. Rowse—For Commission—Direct.

Merchandising Corporation, without conceding in any way the truth of statements therein contained, but merely as an evidence of transactions between the A.M.C. and the Boston Store. As regard Commission's Exhibit 561, I believe it is obvious that from a reading of Commission's Exhibit 560, and a reading of Commission's Exhibit 561, that there is a letter, or should be a letter from the Boston Store to the A.M.C., in answer to the A.M.C.'s letter of April 10th, because I believe that it appears from a reading of Commission's Exhibit 561, dated April 15th, that is a reply to a letter from the Boston Store, and I respectfully object to the admission into evidence of Commission's Exhibit 561, unless the letter to which it is a reply is also offered. Commission's Exhibits 560 and 561 are the two top letters.

8249

Examiner Bennett: Yes. Well, I will receive the documents to which there is no objection, that is, Commission's Exhibits 560, 562, 563, 564, 565, 566 and 567, as Commission's Exhibits of the same numbers in evidence. I do not get the same impression that the attorney who objects does, as to Commission's Exhibit 561.

8250

Mr. Albert: It is quite true, your Honor, he does not mention that, but I think that the tenor of the letter shows that it is a reply to a query put as a result of Commission's Exhibit 560.

Examiner Bennett: Well, Commission's Exhibit 560 is in evidence. I will overrule the objection, and receive it. (Referring to Commission's Exhibit 561.)

Mr. Albert: Exception.

Walter L. Rowse—For Commission—Direct.

8251

(The documents referred to, heretofore marked for identification Commission's Exhibits 560, 561, 562-A and B, 563-A and B, 564, 565-A and B, 566 and 567-A to E, inclusive, were received in evidence.)

(Thereupon papers were marked Commission's Exhibits 568, 569-A and B, 570 and 571-A and B for Identification.)

WALTER L. ROWSE thereupon resumed the stand as a witness for the Commission and, having previously been sworn, testified further as follows:

8252

Direct examination by Mr. Haycraft (continued).

Q. (Indicating) I show you Commission's Exhibit No. 568 and ask you if you can identify that in any way, Mr. Rowse? A. I can identify this letter.

Q. Did you receive it? A. I received it.

Q. Will you describe who it is from, and to? A. It is addressed to the Boston Store, Herzfeld Phillipson, Milwaukee, dated January 6th, from the Fashion Originators Guild of America, signed by Jack Goldston.

Examiner Bennett: That is 1935?

Mr. Haycraft: 1936.

8253

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibits No. 569-A and B, and ask you if you can identify that? A. This letter was sent to me.

Q. Did you receive it? A. I received it. It was addressed to Mr. Nathan Goldstein of the Boston Stores and signed by Albert M. Post. It is dated July 1, 1935.

8254

Walter L. Rouse—For Commission—Direct.

Q. I show you Commission's Exhibits 578-A to D for Identification and ask you if you can identify that? A. There are two letters here.

Q. Are there two letters there? A. Yes, about different things entirely.

Mr. Haycraft: I would like to change the numbering on 570. I would like to change 570-D to the next number, 572, because it is a separate document.

Examiner Bennett: All right.

8255

(The document referred to, heretofore marked for identification Commission's Exhibit 570-D, was changed to Commission's Exhibit 572 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 570-A to C and ask you if you can identify that? A. I received this letter.

Q. Did you receive it? A. Yes.

Q. From whom, to whom? A. Addressed to Mr. Nathan Goldstein, dated February 15, 1935, signed by J. M. Golby.

Q. Of the Fashion Originators Guild? A. Of the Fashion Originators Guild.

8256

Q. I show you now Commission's Exhibit 572 and ask you if you can identify that? A. I received this letter from the Fashion Originators Guild. It is addressed to me, dated June 17, 1935 and signed by J. M. Golby, executive secretary.

Q. I show you Commission's Exhibits 571-A and B and ask you if you can identify that? A. I received this telegram.

Q. From whom? A. It is addressed to the Boston Store and it is dated February 16, 1936, signed by the Fashion Originators Guild of America.

Walter L. Rowse—For Commission—Direct.

8257

(The documents referred to, heretofore marked for identification, Commission's Exhibits 568 and 572, were received in evidence.)

By Mr. Haycraft.

Q. Mr. Rowse, did the Boston Store ever contribute to the Guild to underwrite the expenses of a shopper in Milwaukee? A. Not to my knowledge.

Q. Did you attend any meeting where that matter was discussed? A. No.

Q. Calling your attention to the last paragraph of Commission's Exhibit 540-B, which is a postscript: "In the matter of violation of trade practices, we propose to establish a board of appeals, before whom any controversial matter may be brought. We have consulted retailers and requested the establishment of a retail panel, so that any decision, not satisfactory to the retailer, may be submitted to a committee consisting of two retailers and two manufacturers. Such an arrangement would assure ample protection to all parties." I ask you whether, to your knowledge, such a board of appeals was established by the Guild? 8258

Mr. Albert: Objected to, no foundation laid as to the source of the witness' knowledge with respect to that. It is purely a Guild matter.

Examiner Bennett: He may answer. Overruled.

Mr. Albert: Exception.

8259

The Witness: You ask if I know if such a board was established?

By Examiner Bennett.

Q. If you have any knowledge of it. A. I knew there was such a board.

8260

*Walter L. Rouse—For Commission—Direct.**By Mr. Haycraft.*

Q. Did you ever receive an invitation to appear before such board? A. No.

Q. Calling your attention to Respondents' Exhibits 38-A and B, I will ask you if you ever made a reply to that telegram? A. I did not make a reply.

Q. Did the Boston Store, to your knowledge? A. I handed this telegram over to another executive.

Q. To whom did you hand it? A. To Mr. Street.

Q. To your knowledge, was any reply made to it? A. Not to my knowledge, there was no reply made to it.

8261 Q. Subsequent to the date of this telegram, do you know whether or not you were able to get merchandise from Guild manufacturers? A. You mean after this telegram?

Q. Yes. A. I don't know.

Q. How is that? A. I don't know.

Q. You don't know? A. No.

Q. Who had charge of the ready-to-wear division at that time? A. Mr. Dillon.

Q. Mr. F. C. Dillon? A. Mr. F. C. Dillon.

Mr. Haycraft: I will ask that this be marked for identification Commission's Exhibits 573-A and B.

(The document referred to was marked Commission's Exhibits 573-A and B for Identification.)

8262 *By Mr. Haycraft.*

Q. Showing you Commission's Exhibits 573-A and B, I ask you if you can identify it? A. I can identify this list.

Q. What is it? A. It is a list of members of the Fashion Originators Guild from whom we made purchases during the period February 1, 1935 to July 1, 1936.

Q. Do you know who prepared it? A. Our control office.

Walter L. Rouse—For Commission—Direct.

R. E. Vogt—For Commission—Direct.

8263

Q. Do you know from what source it was prepared or what sources? A. From our purchase records.

Q. Under whose general supervision was it prepared?

A. Under Mr. Richard Vogt's.

Q. What position does he hold? A. Controller.

Q. Do you know what the source of the list of the Guild manufacturers was that was used in the preparation of that document? A. I don't quite get the question.

Q. I say, do you know where Mr. Vogt got the list of Guild manufacturers that was used in the preparation of that? A. No, I do not.

Q. You don't know? A. No.

8264

(Witness temporarily withdrawn.)

R. E. VOGT was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Hayercraft.

Q. Will you state your name? A. R. E. Vogt.

Q. Where do you live, Mr. Vogt? A. Milwaukee.

Q. What is your occupation? A. Comptroller of the Boston Store, Milwaukee.

Q. I show you Commission's Exhibits 573-A and B for Identification and ask you if you know anything about it? 8265

A. Yes, sir, I do.

Q. What do you know about it? A. The list was prepared under my direction.

Q. Where did you get the information there as to the names of the Guild manufacturers? A. We used a letter which we received from the Guild at that time, January 13, 1936, showing the names of members, on the back of that letter.

8266

R. E. Vogt—For Commission—Direct.

Mr. Haycraft: I will ask that this be marked for identification Commission's Exhibit 574.

(The document referred to was marked Commission's Exhibit 574 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 574 and ask you that is the paper you have in mind? A. It is.

Q. Where did you get it? A. It was received from the Fashion Originators Guild.

8267

Q. What use did you make of the names on that exhibit? A. We used this list as a basis or a key or a list of houses who were members of the Guild, as of this time.

Q. As of January, 1936? A. Yes.

Q. Then, what did you do? A. We checked this list against our purchase records for the dress departments to determine from whom we made purchases.

Q. Commission's Exhibits 573-A and B was prepared in that way? A. That is correct.

Q. Do you know whether it is correct or not? A. I know it is correct.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: Let me understand this.

By Mr. Albert.

8268

Q. Is this list, Commission's Exhibit 573-A, a list of manufacturers with whom you did business from February 1st, 1935 to July 31, 1936, who were members of the Guild on January 13, 1936? A. That is correct.

Q. And there is no intention that this list contained in Commission's Exhibit 573-A represents manufacturers who are presently all members of the Guild, is that true? A. That is true. We had no way of knowing that.

Mr. Albert: That is objected to, may it please the Court, upon the ground that no proper foundation

*R. E. Vogt—For Commission—Direct,
Walter L. Rowse—For Commission—Direct.*

8269

tion has been laid. The list is entirely immaterial and irrelevant.

Examiner Bennett: Overruled. It is received.

(The document referred to, heretofore marked for identification Commission's Exhibits 573-A and B, was received in evidence.)

Mr. Haycraft: That's all, Mr. Vogt.
(Witness excused.)

WALTER L. ROWSE thereupon resumed the stand as a witness for the Commission and, having previously been sworn, testified further as follows:

8270

Direct examination by Mr. Haycraft (continued).

Q. Calling your attention to Commission's Exhibits 573-A and B, I will ask you to testify as to the names of the Guild members on this exhibit from whom you purchased the merchandise in substantial quantities, to your knowledge, that is, from your own recollection.

Mr. Albert: That is objected to, may it please the Court, as being purely a matter of conjecture, as being not sufficiently definite or specific to be of any value whatsoever to the Commission, being a conclusion of the witness, and no proper foundation having been laid.

8271

Examiner Bennett: Overruled.

By Mr. Haycraft.

Q. Go ahead, Mr. Rowse. A. We purchased merchandise from Doloes Dresses, B. G. Garment Company, International Dress, C. H. and D. Robbins, Lipman and Snyder,

8272

Walter L. Rouse—For Commission—Direct.

Cecele Dance Frocks, Lyttle Brothers, Abbott & Swift, Bender-Hamburger, Feigenbaum and Adelson, Radiant Dress, Dresden Dress, Rosen Brothers.

Q. I probably should have included in my question, whether the purchases you are referring to now were made during the year preceding the time that you left that department, during 1935? A. They were made preceding February, 1936.

Q. Yes. At some time during the year, 1935, would that be true? A. That is right.

Q. Did you mention the name of Louise Mulligan? A. No. I mentioned B. G. Garment Company.

8273

Q. Is that Louise Mulligan? A. Louise Mulligan is a separate company, but we always think of it as the same firm.

Q. Did you look on the second page of this exhibit, in giving your testimony? A. I see some more names here. Gracette Dress, Patricia Dress Corporation, Topaz Frocks, Lipman Brothers.

Q. Are you familiar with Louise Mulligan as a resource for the Boston Store during 1935? A. I am.

Q. Will you testify at this time as to the relationship between the Boston Store and Louise Mulligan, with respect to promoting the merchandise sold by that concern?

8274

Mr. Albert: That is objected to, if the Court please, as entirely irrelevant and immaterial. I do not quite see the function of bringing in the connection between the Boston Store and Louise Mulligan, in a complaint against the F.O.G.A.

Mr. Haycraft: It is a foundation question.

Mr. Albert: I know; but there are some foundation questions that are so broad you cannot make them specific. I do not think that can be made specific in any manner.

Examiner Bennett: Let us see what the answer is. I will entertain a motion to strike.

The Witness: What did you ask me?

Mr. Haycraft: Read the question.

(Question read by the reporter.)

By Examiner Bennett.

Q. Can you testify, is all you have been asked. A. I can.

By Mr. Haycraft.

Q. Will you do so? A. We made arrangements with the Louise Mulligan Company to have exclusive sale of the dresses designed by Louise Mulligan in Milwaukee. We agreed that we would give them publicity, we would give them prominent space in our department, we would try to develop that line as the feature line of our junior department. We started the sale of these dresses in the fall, I don't exactly recall the date and sold them continually through the time that I was there.

8276

Q. Did you make any special effort in the way of promotion during that time? A. In the fall, we ran quite a lot of newspaper advertising. We had Louise Mulligan come to Milwaukee, we gave a luncheon, at which time we had fashion writers of the local papers, and prominent women in Milwaukee at luncheon to meet her. We had a style show. We gave prominent window displays.

Q. What success did you meet in the promotion of that line? A. We were very well pleased with it, the manufacturer expressed himself as being well pleased with the result.

8277

Mr. Haycraft: I will ask that these photostats be marked for identification Commission's Exhibits 575 to 586, both inclusive.

(The photostats referred to were marked Commission's Exhibits 575 to 586, both inclusive, for Identification.)

8278

*Walter L. Rowse—For Commission—Direct.**By Mr. Haycraft.*

Q. I show you Commission's Exhibits 575 to 586, inclusive and ask you if you can identify them? A. I can identify these as being photostatic copies of our newspaper advertising.

Q. Featuring what? A. This group features Louise Mulligan dresses.

Q. Did you have anything to do with the authorization of that advertising? A. I had the jurisdiction of it at that time.

8279

Q. And where were they advertised, according to these exhibits, in what periodicals or newspapers? A. The "Milwaukee Journal," the "Milwaukee Journal," the "Milwaukee Sentinel," the "Journal," the "Sentinel," the "Milwaukee Sentinel," "Milwaukee Journal," "Milwaukee Journal," "Milwaukee Sentinel," "Milwaukee Journal."

Mr. Haycraft: I offer these photostatic copies in evidence.

The Witness: Just a second. This copy is not Louise Mulligan (indicating).

Mr. Haycraft: Commission's Exhibit 586 does not refer to Louise Mulligan?

Examiner Bennett: Do you withdraw it?

By Mr. Haycraft.

8280

Q. I ask you to look at it again. A. This 586 is Louise Mulligan.

Q. But it is not illustrated? A. No.

Q. The illustration is Irma Kirby. Who is she? A. She is a designer.

Q. Do you know what firm she is with? A. With Mr. Fried.

Q. Is he a member of the Guild? A. I think he is.

Q. What was the purpose of inserting these advertisements?

Mr. Albert: That is objected to, may it please the Court, as being wholly irrelevant and immaterial, not binding on the respondents herein. I think, before we have a dozen of these exhibits put in, we ought to have a statement from Mr. Haycraft as to what he hopes to prove by this particular line of testimony, as far as relevancy is concerned. I don't think the record should be cluttered up, if eventually there is a possibility that all the testimony is going to be stricken out.

Mr. Haycraft: That was the purpose of the question.

Examiner Bennett: He may answer.

The Witness: What was the question?

(Question read by the reporter.)

The Witness: To create customer acceptance for the garments designed by these designers, purchased at our store.

Mr. Haycraft: I offer these exhibits in evidence.

Mr. Albert: These are objected to, may it please the Court, as being wholly immaterial and irrelevant to the issues presented by the case of the Federal Trade Commission, as representing, if anything at all, merely the private arrangement between a single manufacturer and this particular store; in no way connected with or binding upon, or that can be connected with or made to be binding upon the Fashion Originators Guild.

Examiner Bennett: Up to the present time, that is true. If the Commission's attorney intends to connect it up, he may say so.

Mr. Haycraft: I do intend to.

Examiner Bennett: That is, by showing that these resources were cut off, by another witness?

Mr. Haycraft: Yes, by another witness.

Examiner Bennett: And that the benefit of this promotion was not received?

Mr. Haycraft: Correct.

Examiner Bennett: I will receive them over objection, on the statement that that will be shown.

(The documents referred to, heretofore marked for identification Commission's Exhibits 575 to 586, both inclusive, were received in evidence.)

By Mr. Haycraft.

Q. What was the policy of the Boston Store with respect to its better dress lines—or its dress lines, I will put it that way—in the departments over which you had supervision in 1935?

Mr. Albert: With respect to what, may I ask? The question is certainly too indefinite.

Mr. Haycraft: With respect to the improvement or lack of improvement in that department.

Mr. Albert: The question is objected to as still being too indefinite—what was their policy with respect to the improvements of their departments. The witness can answer anything to that. I would like to be able to have a question that I could object to, if it is objectionable.

Mr. Haycraft: Read the question.

(Last question read.)

Mr. Albert: I do not know, it may be a policy of not having any dresses, it may be a policy of improving the electric light system. I can get any kind of an answer from a witness on that, your Honor.

Examiner Bennett: Well, see what he answers. You may answer.

The Witness: For the fall season of 1935 we created a new department for the sale of better

dressess; to make room for this department we went into a very extensive remodelling plan, putting in new fixtures, air conditioning, new equipment throughout to facilitate the sale of better type merchandise.

By Mr. Haycraft.

Q. Did you make any changes in the personnel in that respect? A. In the continuation of our policy, in February, 1936, we secured the services of an experienced apparel man to take charge of those departments.

Q. Who is he? A. Mr. Dillon. In addition to that, we added to our departments the services of a fashion coordinator or stylist.

8288

Q. What is the name of these—or is that one person? A. It is one person.

Q. What is her name? A. Miss Drew's.

Q. What would be her duties? A. Her duties were to see that proper displays were made, that in our displays the proper accessories were shown, and to lend her assistance in creating a better style atmosphere.

Mr. Haycraft: That is all that I have to ask.

Mr. Martin: Your witness.

Cross-examination by Mr. Albert.

Q. Was that new department, Department 335, Mr. Rowse? A. 335, yes.

8289

Mr. Albert: May we have our usual recess now, your Honor?

Examiner Bennett: Would you rather have it now?

Mr. Albert: I prefer it, if there is no objection.

Examiner Bennett: It is all right.

Mr. Albert: It may be a little early.

8290

*Walter L. Rowse—For Commission—Cross.***Examiner Bennett:** Take a recess of ten minutes.**Mr. Albert:** Thank you.

(Thereupon a short recess was taken.)

Examiner Bennett: You may proceed.*By Mr. Albert.*

8291

Q. Mr. Rowse, as the result of your experiences, with the information that you have from the A.M.C., and of your general interest in this entire proceeding, do you not know, or are you not aware, of the fact that if the Boston Store signified its intention to protect the designs of the members of the Fashion Originators Guild of America, that the members of the Fashion Originators Guild would be very happy to sell you their merchandise?

Mr. Haycraft: Objected to, Mr. Examiner. I do not believe that a question of this kind is entirely proper. It calls for a statement of this witness which might incriminate him and his firm in a conspiracy, and I think he should certainly consult counsel before he answers that question.

Examiner Bennett: Well——

Mr. Albert: I do not quite see how there can be anything incriminating in his statement; but if he knows what we would do if they were willing to——

Mr. Haycraft: Yes, but——

8292

Mr. Albert: —and it certainly is quite an anomalous situation that on our way from New York to Boston, Philadelphia, Cleveland, Detroit and Chicago, we now for the first time have counsel for the Commission informing witnesses of their constitutional privilege against self-incrimination, and I do not think there is anything self-incriminating in it whatsoever. I think the question can very readily be answered. The question has been put numerous times before and has been answered.

Examiner Bennett: Counsel is here for the witness; unless he objects, I will ask the witness to answer.

Mr. Whyte: Will you read me that question?
(Last question read.)

Mr. Whyte: I do not think I have any particular objection to that. You are asking whether they would be happy to sell him—

Examiner Bennett: All right, you may answer.

The Witness: I don't know.

Mr. Whyte: —if the Boston Store complied with the rules.

The Witness: I do not know.

Examiner Bennett: It is answered.

Mr. Whyte: He is asking whether they would be willing to do it. That is all.

By Mr. Albert.

Q. Do you know, Mr. Rowse, that other stores who are members of the A.M.C., who withdrew their co-operation and subsequently signified their intention of protecting designs, have been sold merchandise by members of the Fashion Originators Guild?

Mr. Haycraft: Objected to, irrelevant and immaterial.

Examiner Bennett: I sustain the objection to that.

Mr. Albert: Exception.

By Mr. Albert.

Q. Has the Boston Store made any inquiry, to your knowledge, to determine whether or not members of the Fashion Originators Guild will sell them merchandise if the Boston Store signifies its intention of protecting de-

8296

*Walter L. Rowse—For Commission—Cross.**Floyd C. Dillon—For Commission—Direct.*

signs in accordance with the program of the members of the Fashion Originators Guild?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let him answer.

The Witness: I have no direct knowledge.

By Mr. Albert.

Q. Do you know whether or not any other executives of the stores have any knowledge thereof? A. I don't know whether they do or not.

8297

Q. Can you obtain that information?

Mr. Haycraft: That is objected to, Mr. Examiner.

Examiner Bennett: The witness seems to be interrogated about a situation that has not been developed on direct examination. I do not see what advantage you are gaining from it, so far as this record is concerned. The record does not show that this firm has been cut off from any source.

Mr. Albert: No further questions, your Honor.

Mr. Haycraft: That is all, Mr. Rowse. Thank you very much.

Examiner Bennett: Much obliged, Mr. Rowse.
(Witness excused.)

8298

FLOYD C. DILLON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. State your full name, Mr. Dillon? A. Floyd C. Dillon.

Floyd C. Dillon—For Commission—Direct.

8299

Q. Where do you live, Mr. Dillon? A. Peewaukee.

Q. What State? A. Wisconsin.

Q. What is your occupation? A. I am divisional merchandise manager of ready-to-wear at the Boston Store.

Q. How long have you occupied that position? A. Since February 12th of this year.

Q. February what? A. February 12th, this year.

Q. Before that, what was your occupation? A. I was the manager of the dress departments for the Emporium in San Francisco—buyer, officially titled.

Q. Buyer? A. Buyer, yes.

Q. How long were you buyer for the Emporium? A. Well, for about three years, I would say.

8300

Q. What did you do before that? A. I was a divisional manager of their basement apparel.

Q. How long did you occupy that position? A. About a year.

Q. What did you do before that? A. I was with Bullock's in Los Angeles.

Q. Bullock's? A. Yes.

Q. What were you doing in Bullock's? A. I was a group manager of their basement ready-to-wear.

Q. How long were you in that position? A. Well, I was with Bullock's from 1925, I believe, until 1929, went in there as assistant buyer, and gradually acquired the group manager job. I don't know just how long I did occupy that.

8301

Q. How many years, would you say, that you were experienced in the buying of women's dresses in department stores? A. Oh, about ten years.

: Albert: Was that two or ten, Mr. Dillon?

The Witness: Ten.

By Mr. Haycraft.

Q. In your duties as buyer, assistant buyer, of department stores, before you came with the Boston Store, in

8302

Floyd C. Dillon—For Commission—Direct.

Milwaukee, would you contact manufacturers of dresses in different parts of the country? A. Yes.

Q. In what markets? A. Well, in Los Angeles, San Francisco, Chicago, New York City, Philadelphia.

Q. Boston—were you ever in Boston? A. Not buying dresses, no.

Q. Now, when you assumed your position, your present position, with the Boston Store in Milwaukee, did you familiarize yourself with the resources of that organization in the departments over which you had supervision, and by resources I use that as a trade name meaning the manufacturers who manufacture the merchandise sold through those departments? A. Yes.

8303

Q. Were they resources with which you were familiar before that time? A. Yes.

Q. Can you testify as to the names of those resources from memory? Do you have independent recollection sufficient to do so? A. Referring to any particular kind of merchandise?

Q. Well, taking the Departments 334 and 354. I believe those departments are under your supervision, are they not? A. Yes.

Q. Who were the principal resources at the time you went with the Boston Store, for those departments?

8304

Mr. Albert: May I ask whether the question is directed at whether or not this witness knew of those resources prior to the time that he joined them, or is it directed at a reiteration of what those resources were at that time? If the latter, I think it is merely cumulative. We have an exhibit in evidence that tells us what those are, with the previous witness.

Mr. Hayercraft: I am trying to qualify the witness and wish to further complete the examination. Mr. Examiner.

Floyd C. Dillon—For Commission—Direct.

8305

Examiner Bennett: All right.

The Witness: I do not understand the question.

Mr. Haycraft: Read the question.

(Last question read.)

Mr. Albert: That is objected to. Commission's Exhibit No. 573 for Identification speaks for itself.

Mr. Haycraft: We are all agreed on that, but that has not anything to do with the question I am propounding.

Examiner Bennett: I understand you are trying to qualify the witness in an endeavor to find out whether he knows who are the resources. Is that the idea?

Mr. Haycraft: Exactly.

8306

Mr. Albert: That is not the question. The question was "Who were the principal resources?" not whether he knew them at that time. That is why I asked Mr. Haycraft to make it clear—and the witness did not know what Mr. Haycraft meant by that. I was trying to save time, but, of course, Mr. Haycraft, with his usual obstinacy, refuses to permit anything he has once said to be—

Mr. Martin: I move that be stricken from the record.

Mr. Haycraft: I insist it stay in.

Examiner Bennett: All right. It is overruled. You may answer.

The Witness: May I have the question again?

8307

(Last question read.)

The Witness: Well, Departments 334—we did business with Bennett-Swift, at the lower end; Bettina—

By Mr. Haycraft.

Q. What was the last name? A. Bettina, Philadelphia.

Q. How do you spell that? A. B-e-t-t-i-n-a, I believe.
Little Brothers.

Q. What price range was Bettina? A. \$10.75, whole sale.

Q. Bennett & Swift, what was their range? A. Seven and eights.

Q. Would you mind giving the price line, if you can? A. All right. Rosen Brothers women's dresses at \$10.75 principally. I have mentioned Little Brothers.

Q. Yes. You said what they were, but you did not give— A. Little Brothers, also in women's sizes, \$10.75 and I think a little higher they had, in the misses' end. The 354 Department, the number of our resources would be Aywon, International—both of those are tens and some are higher. C. H. D. Robbins, tens, eleven and twelve. Daytime Dress—did I mention International?

Q. Yes. What price range did that carry? A. Tens chiefly, those are a sample of some of them. There were quite a good many resources used.

Q. Now, in the Department 335, which, as I understand was a new department at that time, what were your principal resources in that department? A. Well, as to principal resources, I do not believe I am qualified to answer that. I don't remember that. I know who we probably would be doing business with now, but at the time of recording I don't know.

Q. Anyway, you can refresh your recollection on that. A. Well, we have a list of better houses that we did business with.

Q. (Indicating) I show you Commission's Exhibit No. 573-A and B—see if you can refresh your recollection from that list. A. Well, Milton Altmark, Bender & Hamburger, Doves Dress, Feigenbaum & Adelson are firms that I am sure we did—were important firms to us—they cover the misses' and the women's there. In evening dresses—Kallman & Morris was probably the most used.

Q. Now, about Department 374. A. Well, our most featured and talked about line there was our Louis

Floyd C. Dillon—For Commission—Direct.

8311

Mulligan line, more or less the personality of the department, and we did business with Harris Dress, and Rosenthals & Kalman and Debutante. I would say they would be our biggest volume houses.

Q. Now, Departments 338 and 358, do you have those under your supervision? A. Yes.

Q. Those are the cheaper— A. Yes, those are mainly \$4 cost.

Q. Were there any Guild houses included in your resources? Do you recall, in those departments? A. In 33—

Q. 338? A. Yes, at the time of our red carding, or at least at the time of our last letter from the Guild, it gave us a membership list, there were some \$6.75 houses listed as Guild members. As I recall it, Gladdy, Tru-Size, was one of them, that we had been doing business with. I don't just recall the others offhand. I could, if I saw a list.

8312

Q. Look on the second page of the exhibit you have in front of you (indicating). A. Yes, Lipman Brothers, Topaz—I would say those would be the main ones in that department. The others are sevens, apparently.

Q. Now, you mentioned the red carding. When did that take place, as far as the Boston Store is concerned?

Mr. Feldman: If you know.

The Witness: I believe it was the 18th day of February, this year.

8313

By Mr. Haycraft.

Q. Do you recall how you first learned of it? A. Well, I believe we learned about it—the action that was taken in the women's wear—we were not aware of the fact that we had been red carded, I don't believe, we had no communication from the Guild that we were red carded.

8314

Floyd C. Dillon—For Commission—Direct.

Q. Now, did you make any attempts to obtain merchandise from the manufacturers that you knew to be resour that were Guild manufacturers, after the red cardin

A. Yes.

Q. What did you do in that respect? A. Well, we had some merchandise on order which we wanted to ship, naturally we were interested in keeping our supply com and attempted to buy dresses, both—mainly, however, attempts to—and tried to place orders—was by our buy in New York, Miss Ogle, Miss Maggy and Miss Hawk

Q. Well, what success did you meet with in that spect? A. We were not allowed to buy any of the merchandise.

8315

Q. Were you able to get the orders that were pending the pending orders filled? A. They were all filled.

Mr. Albert: You say they were all filled?

The Witness: All filled.

By Mr. Haycraft.

Q. Did you attempt to place any new orders? A.

Q. With what success? A. We didn't get them.

Q. Did you have any demand for merchandise at manufacturers, at the Guild manufacturers, from whom you had been buying? A. Well, we had, and still had repeated requests for one brand name that we were using; and could not supply that at all.

8316

Q. What brand name was that? A. Louise Mulligan.

Q. What attempts did you make to satisfy your demand when you found you could not get Guild merchandise?

A. Well, we done our best to find substitute lines and some certain items we have been able to take care of ourselves. Also, the resignation or withdrawing from the Guild of a lot of the lower-priced people, who we did business with, naturally opened up that market to us.

Q. When did that take place, do you recall? A. Which?

Q. When did the resignation you referred to take place?

A. Well, I am not sure as to dates. It was, I think, right after this red carding got to be an issue, in the market, probably the third week in February, in March, or along in there. There were quite a few lower-priced lines, I remember, that became available to us again.

Q. Will you indicate which ones those were? A. Well, I am not thoroughly familiar with just when and what on them, but now we can buy—we can now buy from Bennett & Swift, Elvira, I believe, M. & S. Extract, Gladdy, Gracette, Lipman Brothers, Patricia, Rosenthal and Kalman, Tiljane, Topaz. I believe those are all people that we can now buy from.

8318

Q. Well, how about the higher brackets, higher-priced lines? A. Well, the higher the price line the more trouble we have—it seems just about the same ratio.

Q. Can you testify as to the names of any particular resource that you have not been able to replace with another line of merchandise? A. Yes.

Q. Will you do so, please? A. Yes, we have not been able to replace Dolces Dress, C. H. D. Robbins, Louise Mulligan. Those are distinct types of houses that we obviously have not been able to replace—at least that—there are others.

Q. Will you name some others? A. Well, we have not been able to replace Altmark for a certain kind of clothes, or William Bass, or Feignbaum & Adelson, or A. Goodman, or Joe Halpert, Junior Guild in Chicago, Aywon Dress, Daytime, International, Witlin Schneider, Capri, Casino, Dresden Dress, Little Brothers. That is the main.

8319

Q. Those are the principal ones? A. Yes, sir.

Q. Now, Mr. Dillon, do you have an opinion as to the effect upon the business of the Boston Store that is under

8320

Floyd C. Dillon—For Commission—Direct.

your supervision, as the result of the red carding of the Boston Store by the Guild and your inability to replace the resources you have named here?

Mr. Albert: That is objected to, if it please the Court, immaterial and no proper foundation has been laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

The Witness: May I have the question?
(Last question read.)

The Witness: May I refer to a few notes I have?

8321 *By Mr. Haycraft.*

Q. It is all right with me. First I will ask you—that question may be answered yes or no. A. I can.

Q. Have you an opinion? A. I have an opinion that we definitely have been hurt, yes.

Q. Will you state in what way you have been hurt? A. I would like to refresh my memory a little, if I could.

Q. All right. A. (Witness refers to paper.) Well, first of all, I feel that we have been cut off from our regular sources of supply. I feel that we have lost good will, which we have built up through advertising. I feel that we have been weakened in our competitive standing in the city. I feel that we are hampered now in our fall planning, our fall promotional program. The figures that

8322

I have seen as to our gross margin indicate that we are taking more mark-downs than we did previously. A check-up on our lists of our customer returns shows that we are getting a higher percentage of returns from our customers than we did previously, and our unit sales records, by price lines, show that there have been a very definite shift towards the lower-price lines. And I also feel that we are barred from the co-operative promotions which are offered us frequently by such magazines in the fashion

Floyd C. Dillon—For Commission—Direct.

8323

field as "Harper's Bazaar," "Vogue," "Ladies' Home Journal," "Good Housekeeping." I feel all of those have been detrimental to our business.

Q. Now, will you explain how it affected the good will of your store? A. Well, we advertised Louise Mulligan dresses. We purchased the line, I understand, at the time that it was first brought out, and consistently purchased the line, ran "ads" on them, putting in windows on them, having fashion shows on them, trying to build the name up—and we cannot buy them any more.

Q. Have you tried to do that recently? A. Yes.

Q. With what success? A. They would not sell us.

Q. Did you try to place an order? A. I did not tender them an order, I don't know their styles, I can't even see them.

8324

Q. Cannot even see them? A. No.

Q. Did you have any communication from that firm with respect to them? A. We have had telephone calls, and we have had some correspondence. Not long ago I wrote Mr. Gisnet and asked him—who is the buyer there—asked him what his plans were for Milwaukee, for this fall, and he answered my letter, he told me that he was going to sell it to someone else. He already had sold it to a competitor.

Q. What competitor is handling it? A. He did not state the competitor in his letter, but I was over there yesterday and talked with him, and I understand that T. A. Chapman's are going to have the line.

8325

Q. Do you have any other illustration of the effect on your good will? A. Well, it is certain that—in my mind, that people are coming to us, daily, in considerable numbers, expecting to find in our store the best merchandise in the market, and we, in my opinion, don't have it. I think that that goes on every day.

Q. Well, what did you have in mind—will you explain that you meant when you said it weakened your competi-

8326

Floyd C. Dillon—For Commission—Direct.

tive standing? A. Well, our competition with all the other stores in the city, with the exception of Schuster's, have available to them the entire market, no houses are barred to them, as far as I know; whereas we are barred from what we consider to be a considerable number of resources, which we call our best resources.

Q. What did you have in mind when you testified with respect to the effect on your fall promotional program?

A. Well—

8327

Q. You have been hampered, I believe you said? A. Well, we have just opened our little shop, which is a department devoted to merchandise in the better end, \$22.75 up, and we feel that people are coming to us, or would come to us in increasing numbers for that class of merchandise. We are not able to get the lines which, in my opinion, would aid us in making a good impression with a new department.

We have also enlarged considerably our collegian department, which is junior sizes, and there, too, we cannot advertise Louise Muffigan dresses, which were the backbone of our publicity in that section. It was a feature of our spring—fall—or spring fashion campaign, in March.

8328

Also, we are not able to take advantage, right at this particular time, of a tie-up, in a publicity way, or dramatizing way, of this Mary of Scotland motion picture, in fashions which have been brought out; I understand, from the mailing matter that I see from C. H. D. Robbins, that they are exclusive—have the exclusive rights to the promotion of these fashions for Mary of Scotland, and I see other stores tying up with it, in other cities, and I feel that it has a wide appeal if the picture is considered to be good, and I feel that we would have at least taken a window, or an "ad," and tied up in some manner with the theatre on this picture, and on our fashions.

Q. What is the situation with respect to the co-operative promotional offer by "Harper's Bazaar," "Vogue" and

other magazines, from which you are barred? A. I do not understand that.

Q. (Last question read.) A. Well, the situation is this: That from time to time the fashion editors of these magazines send us advance proofs of their fashions, which they are going to put over to their public as being the smart things of the month, or the season, and they offer us a list of the resources from which this merchandise is available, and offer co-operative aids in helping us to dramatize and promote these particular clothes.

"Vogue" allows us to quote, when we tie up with them, "By 'Vogue' so and so, and look on page so and so; we have it."

8330

Or, if it is "Harper's Bazaar," much the same, or "Ladies' Home Journal," much the same sort of a thing, and we find—we did from the start in February, March, that we just can't get in with it at all, because in looking at the list of resources they are overwhelming Guild. There is just, practically no one in that magazine. For instance, a certain issue of "Vogue," or a certain issue of "Harper's," or "Ladies' Home Journal"—that there is hardly anybody in there that is not Guild. It would be very—we just couldn't co-operate with them.

Q. Do you have any figures showing the comparison of the sales of merchandise in your department, for the first five months of 1935 compared with the five months in 1934? A. Yes, I have some figures here. They are figures that were taken from our unit control, which show the percentage increase or decrease of three best selling price lines in Departments 334, 335 and 354 this year, as compared with last year, for six months this year. We also have a similar list of three price lines for the Junior Department, 374, by percentage.

8331

8332

Floyd C. Dillon—For Commission—Direct.
R. E. Vogt—For Commission—Recalled—Direct.

By Mr. Haycraft. Q

Q. Who prepared that for you? A. These figures were from our regular figures we get every day and are supplied me every month in recap form. This particular list here was made by our controller.

Q. Mr. Vogt? A. Mr. Vogt.

Mr. Haycraft: I will ask that these documents be marked for identification Commission's Exhibits 587 and 588.

8333

(The documents referred to were marked Commission's Exhibits 587 and 588 for Identification.)

By Mr. Haycraft.

Q. These figures on these two exhibits are the ones you had in mind when you testified a few moments ago as to the effect upon your price line? A. In part, yes, it indicates something on that:

Mr. Haycraft: I will ask Mr. Dillon to step down, and I will ask Mr. Vogt to reassume the stand:

(Witness temporarily withdrawn.)

8334

R. E. Vogt thereupon resumed the stand as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. I show you Commission's Exhibits 587 and 588 for Identification, Mr. Vogt, and ask you if you know anything about them? A. Yes, I do.

Q. What do you know about them? A. These exhibits show percentages, which compare the number of units sold of various price lines by months, February through July of this year, against the same period last year.

Q. Did you prepare it? A. I prepared this percentage compilation, yes, sir.

Q. From the original records of the Boston Store? A. From the original records of the unit sold by the store, yes.

Q. What price lines are listed there? A. In Departments 334, 335 and 354, price line \$16.95, \$19.95 and \$29.75.

Q. What exhibit is that? A. Exhibit 587.

Q. That is the retail price? A. Yes.

8336

Q. And on Exhibit 588, what price line do you have there? A. On Exhibit 588, \$12.95, \$16.95, \$19.95.

Q. Are those exhibits correct? A. Yes, sir.

Q. You have checked them, have you? A. Yes, sir.

Mr. Haycraft: That's all. I offer them in evidence.

Mr. Albert: I will ask you this:

By Mr. Albert.

Q. What is the percentage of decrease in Department 374, in the \$12.95 price line for March? A. I have not attempted to memorize all the figures.

Q. You did not prepare this particular set of figures, did you? A. It is my handwriting, yes.

8337

Q. I thought this was Mr. Dillon's handwriting?

Mr. Haycraft: Counsel has been asleep, I guess.

Mr. Albert: Not quite. It is merely that Mr. Haycraft did not bring it out.

Mr. Haycraft: You had better read the record.

Mr. Martih: What do you want? A picture of it?

8338

R. E. Vogt—For Commission—Recalled—Direct.

Mr. Albert: May it please the Court, we have here an exhibit being offered in evidence by the Commission as the figures of this store, written in pencil, on the back of stationery of the Palmer House, Chicago.

I do not see any reason whatsoever, why, if figures are being presented, we cannot at least have an exhibit presented that looks as if it were carefully done in the store.

I would like to know whether these have been prepared in the Palmer House during lunch time, or dinner, or some other time.

8339

We are now going to the lowest point, I think, we have ever reached in the Commission's presentation of figures, without telling us how they were arrived at, or where they came from.

I object to these, upon the ground there is no proper foundation laid, and, personally, I think it is an insult to the Commission to put figures like that in evidence.

Mr. Martin: If you had paid attention, you would have known where they came from, and where they were derived from.

Mr. Albert: Personally, from looking at them, I would say they were written out at the Palmer House, at lunch time, or dinner time.

8340

Mr. Haycraft: Does that affect their admissibility?

Mr. Albert: Certainly, if that is the way they were done.

Mr. Haycraft: The witness is here. You can cross-examine him.

Mr. Albert: If this goes in, I am afraid the Commission might present a tablecloth from some hotel.

Mr. Haycraft: I might try that.

R. E. Vogt—For Commission—Recalled—Direct.

F. C. Dillon—For Commission—Recalled—Direct.

8341

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Overruled. Received in evidence.

Mr. Albert: Exception.

(The documents referred to, heretofore marked for identification Commission's Exhibits 587 and 588, respectively, were received in evidence.)

Mr. Haycraft: That's all, Mr. Vogt.

(Witness excused.)

Mr. Haycraft: I will ask Mr. Dillon to reassume the stand.

8342

F. C. DILLON thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Now, referring to Commission's Exhibit 587, I notice that the price line \$16.95, retail price line \$16.95, is in the first column. What is the usual cost of that? A. \$10.75.

Q. I observe that it shows varying percentages of decrease during the months of February, March, April and May, and an increase in June of 150 per cent., and in July of 1 per cent. I will ask you whether you have an explanation for that trend or change of sale? A. We apparently haven't got the right dresses at those prices.

8343

Q. What about June, where you show the increase? A. We cannot recall what caused that. We have from time to time found an item, a style or two, or a type of fabric or type of styling which gave us a lift and got us business.

8344

F. C. Dillon—For Commission—Recalled—Direct.

Q. In the second column, there is a \$19.95 retail price line. What is the cost price of that? A. It would vary from ten to eleven to \$12.75.

Q. Then, in the third column, \$29.75. What is the cost price of that? A. \$16.75 to \$18.75.

8345

Q. I notice that in the \$19.95 column you show a 25 per cent. decrease in February, and then substantial increases in the months of March, April and May, less substantial in June and July, with an average at the end of the period of approximately 177 per cent. increase; while, in the third column, in the \$29.75 line, there are varying decreases: February, 28 per cent., March, 63 per cent., April, 67 per cent., May, 53 per cent., June, 20 per cent., July, 40 per cent., with an average for the period of 55 per cent. decline in sales. I will ask you whether you have any explanation of the increase in the sales in your \$19.95 retail line and your decrease in sales in the \$29.75 line? A. Yes.

Q. What is it? A. We found an item shortly after our red carding which was "hot;" and we kept riding it, we increased our assortments in that item, and increased our color range, increased the number of styles carried, and we were able to get a good volume, compared with last season, on that price line because we found a good item.

Q. How about the \$29.75 line? A. We did not have that good fortune there. We have not been able to find the right source of supply.

8346

Q. Was there any shifting in these lines in that department that you referred to in your other testimony? A. What do you mean by "shifting"?

Q. From the higher price to the lower price? A. What items does that cover? What departments does that cover?

Q. 334, 335 and 355. A. Yes; in that department, in the 334 and 355 departments, we have sevens up through eleven, and a few \$12.75 cost, and our \$7.75 cost price line made very substantial increases.

Q. As to Commission's Exhibit 588, which refers to Department 374, I call your attention to the fact that with respect to your \$12.95 price line, there was a substantial decrease, February, March and April, but an increase in May, and then another decrease in June and July, with a total for the period of approximately 45 per cent. decrease. Do you have any explanation of that?

Mr. Albert: Is that a weighted average, Mr. Haycraft?

By Mr. Haycraft.

Q. Do you have any explanation of that change there in that column? A. You are referring to the \$12.95 retail? 8348

Q. \$12.95, yes. A. I think at the first part here, February and March, we were probably harmed there particularly due to Rosenthal & Kalman being in the Guild, but I understand they are out now, and we are doing business with them, some. I cannot really say anything more about it.

Mr. Albert: I ask that the witness' answer to the last question be stricken, as not responsive, and a pure conjecture merely from a reading of the exhibit itself, and not predicated upon even the witness' belief that he has any certain knowledge of the matter.

Examiner Bennett: Let me have the question and answer. 8349

(Question and answer read by the reporter.)

Examiner Bennett: I think I will grant the motion to strike that.

By Mr. Haycraft.

Q. I call your attention to the percentage figures in the \$16.95 column, the second column in this same exhibit,

8350

F. C. Dillon—For Commission—Recalled—Direct.

showing a decrease in the months of March, April, May and June, but an increase in the month of July, and ask you if you have any explanation of the situation in that price list? A. Well, simply that we are not getting the right junior \$10.75 dresses.

Q. I notice, for the month of July, you show an increase in your sales over 1935. How do you account for that? A. How much is the increase?

Q. Fifty per cent. A. You mean the specific items? I am trying to recall what lines we have gotten there, that we have done that.

Q. Were you able to replace any resources during that month, merchandise? A. We must have been.

Q. What type of merchandise did you sell in your store in that department in July, as compared to previous months? A. \$16.95. I cannot recall what the item was.

Q. Mr. Dillon, do you have with you any literature from "Vogue," "Harper's Bazaar," or any of those magazines, illustrating your testimony? A. I believe we have some here, yes. I think these things here bear out what I said. We just received this one last week from "Vogue," which is an advance list on their Paris openings, "First Judgment on Paris Openings," which is going to be in the September 1st issue, and I had our stylist go down this list covering every garment here, and in doing that she compared Guild or non-Guild, according to the last letter we received from the Guild.

8352

It might have some error in it, due to changes in membership that we are not aware of, but there are 1, 2, 3—this is a hand-knitted jacket, which is not a dress; 3, 4, 5, 6—here is a hat, that is not a dress, 7, 8, 9, 10, 11, 12, 13, 14. Every garment on this page is a Guild house, from a Guild house.

And on this other page, apparently every one is down here. This is a hat (indicating). Everything else is Guild

On this page, Frankie, Inc., an evening dress, is not Guild; another evening dress is not Guild. The balance of the dresses and goods seem to be Guild.

This is a shoe (indicating). On this page is a shoe, a shoe, a shoe, a shoe, and shoes. Dress, Nettie Rosenstein, Guild; shoes, shoes, and bags.

Here are hats, ornaments, Charles Nudelman. Apparently it is almost, say, over 90 per cent., at least, Guild merchandise.

Mr. Haycraft: I offer this in evidence.

Mr. Albert: That is objected to, may it please the Court, as being entirely immaterial and irrelevant to this proceeding. If Mr. Haycraft wants a concession that by reason of purchase of Guild merchandise at times a store gets some free advertising, which can be withdrawn at any time by the manufacturers, as they see fit, I will concede that perhaps this store lost the benefit of some free advertising. I think that is the whole point involved. There is no necessity for cluttering up the record with all these exhibits.

8354

By Mr. Haycraft.

Q. Is that all there is to it, Mr. Dillon? A. I don't know what he calls "advertising." Such magazines as "Vogue," "Harper's," "Ladies' Home Journal," "Good Housekeeping," are looked upon by women, in looking at the editorial matter, as speaking about the right styles; they are regarded as knowing their fashions; and to me, it offers a store which is evidently trading up, as we are, it offers an opportunity to capitalize on the authenticity of the clothes, and to give us a chance to glorify them a little, and sort of dramatize the fashions that we have, and I think it is a definite hindrance to us, I am sure that

8355

8356

F. C. Dillon—For Commission—Recalled—Direct.

we would co-operate on a number of these during the course of the year.

Mr. Albert: I will take Mr. Dillon's recapitulation of that exhibit, your Honor, without the necessity of copying four or five pages here, typewritten matter, into the record.

Mr. Haycraft: I am not asking that it be copied into the record. That is the reason I ask that it be put in as an exhibit.

Mr. Albert: It is going to have to be printed eventually. I can see no purpose in it.

8357

Mr. Haycraft: No, it doesn't have to be printed eventually.

Examiner Bennett: It seems to me that the evidence given by Mr. Dillon as to this particular record is quite too indefinite to serve us in following just what is meant by the exhibit, and I think I will sustain the objection to that exhibit.

Mr. Albert: Thank you.

Examiner Bennett: The general trend of the testimony as a whole is in.

By Mr. Haycraft.

8358

Q. Have you ever, in your experience, co-operated with the "Vogue" magazine in such a scheme as is indicated in this exhibit? A. I haven't had the opportunity.

Q. Have you ever done it with any other magazine? A. No.

Q. In your opinion, based upon your experience with this type of merchandise, I will ask you whether or not it would be of any assistance to the Boston Store to have the opportunity of co-operating in such an advertising scheme?

Mr. Albert: That is objected to, may it please the Court, as purely conjectural, as to the effect of

such an advertisement, who sees it, and when it is seen, and how often it is seen. I don't think it can serve much of a useful purpose to have this witness' opinion on it.

Examiner Bennett: I will let him answer.

The Witness: Read the question.

(Question read by the reporter.)

The Witness: It would be of assistance, yes.

By Examiner Bennett.

Q. And, by such an advertising scheme, you refer to advertising with "Vogue" and "Harper's Bazaar," and that sort of magazine? A. This is editorial matter. The fashion editor of "Vogue," or whichever magazine might be in question, pick styles from the market that they consider to be fashionable and style-right, and they present them in an editorial way to their readers as their pick of the market, and they apparently pay them from Guild houses—or pick them from Guild houses, and it would be not in advertising in the sense of a paid ad, or anything paid between anyone. It is simply an editorial presentation on their part, and our putting some drama around it, and glorifying our clothes on that basis.

8360

By Mr. Haycraft.

Q. That is, as being mentioned in "Vogue," is that what you mean? A. Yes, "Vogue," "Harper's."

8361

Mr. Haycraft: I renew my offer, Mr. Examiner.

Examiner Bennett: I think the discussion on that is so indefinite as to be misleading, and I do not see how anybody is going to follow it. I will exclude that offer.

8362

F. C. Dillon—For Commission—Recalled—Direct.

(Whereupon, at 4.30 o'clock P. M., August 27, 1936, the hearing in the above-entitled matter was adjourned, to reconvene at 10 o'clock A. M. tomorrow, Friday, August 28, 1936, at the same place.)

Room 1123, New Post Office Building
433 West Van Buren Street,
Chicago, Illinois,
August 28, 1936.

8363

Met, pursuant to adjournment, 10 A. M. E.S.T.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: Be in order, please. This is a reconvening of hearing from Thursday, August 27th, 1936. You may resume the stand, Mr. Dillon.

FLOYD C. DILLON thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

8364

(Thereupon papers were marked Commission's Exhibits Nos. 589 and 590 for Identification.)

Direct examination (resumed) by Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 589, Mr. Dillon, and ask you if you can identify that?

A. It is a copy of letter I sent to Mr. Gisnet of Louise Mulligan Company, Chicago.

Q. Under what date? A. August 14th, this year.

F. C. Dillon—For Commission—Recalled—Direct—Cross 8365

Q. Was the original of that letter mailed to Mr. Gisnet?

A. I sent it to Mr. Gisnet, yes, sir.

Q. (Indicating) I show you Commission's Exhibit No. 590 for Identification, and ask you if you can identify that? A. It is a letter that I received in answer to my letter; I received this from Mr. Gisnet on—the letter is dated August 15th.

Mr. Haycraft: I offer the two in evidence, Commission's Exhibits No. 589 and 590 for Identification.

Mr. Albert: Objected to, if it please the Court, as immaterial and irrelevant, as regards the particular matter between this store and the particular manufacturer; no way binding upon the Fashion Originators Guild of America. 8366.

Mr. Haycraft: Is it denied that Louise Mulligan is a member of the Guild?

Examiner Bennett: Objection overruled; received.

Mr. Albert: Exception.

(The papers referred to, heretofore marked for identification Commission's Exhibits 589 and 590, were received in evidence.)

(Thereupon a paper was marked Commission's Exhibit No. 591 for Identification.)

Mr. Haycraft: That is all I have to ask Mr. Dillon. 8367

Examiner Bennett: All right.

Cross-examination by Mr. Albert.

Q. Referring to the third paragraph of Commission's Exhibit 590, Mr. Witness, in which it is stated that the manufacturer practically lost the greater half of the spring and summer season because of not selling dresses to you,

8368

F. C. Dillon—For Commission—Recalled—Cross.

do you know whether that is correct? A. We bought his spring line just about one day before the red carding which was February 11th; and, through information which we received from New York, I wired Mr. Post to have this released to us, and he conceded to that, so he did receive shipment in March on the Mulligan dresses. We could not re-order them, but he did not lose, I would not say, the full spring season.

Q. During the time you were unable to obtain Louise Mulligan dresses during the spring and summer season, did anyone else in Milwaukee sell those dresses? A. No. We were exclusive agents.

8369

Q. So, in so far as the manufacturer was concerned, he was unable to sell any dresses in Milwaukee, or did not sell any dresses in Milwaukee of the Louise Mulligan type during that period of time? A. He did not, no, sir.

Q. What did you mean when you said that, through information received from Mr. Post, the dresses were delivered to you which you had ordered prior to the red carding? A. Have we those figures here? I received some communications in the course of business. Here is a wire from Colonel Reilly to Stanley Stone, our store president, which reads: "Have been informed by F.O.G.A. that on the individual requests from red carded stores they probably would instruct Guild members to ship merchandise on orders accepted before present controversy arose."

8370

Q. Have you any objection to showing me that telegram? A. No, sir (handing document to Mr. Albert).

Mr. Albert: I will ask that these be marked for identification Respondents' Exhibits 53, 54, 55, 56 and 57.

(The documents referred to were marked Respondents' Exhibits 53, 54, 55, 56 and 57, respectively, for Identification.)

By Mr. Albert.

Q. Did you have any discussions with Mr. Reilly with respect to the substance of Respondents' Exhibit 53, his telegram? A. No, sir.

Q. Was there any other merchandise outstanding which was delivered to you, which had been ordered prior to the red carding? A. There was.

Q. And was that merchandise all delivered to you pursuant to this understanding referred to in Mr. Reilly's telegram, Respondents' Exhibit 53 for Identification? A. I don't know as to whether that had any bearing on it or not. We only asked for release on that one line. It was advertised in our schedule, and we felt we needed it very keenly.

8372

Q. But, in so far as the Boston Store was concerned, all merchandise that had been on order prior to the red carding was delivered to it? A. Every piece.

Q. And the Boston Store did not in any way discriminate in the orders that it wanted filled? A. No.

Q. I mean, you asked that all orders be filled, and all orders were filled? A. I did discriminate in asking for Louise Mulligan's.

Q. You mean by that, that you particularly wanted that? A. Yes.

Q. But, let us say, if you had ten orders which had been placed prior to the red carding, you did not say you wanted nine, and you would not take the tenth? A. No.

8373

Q. You said, "Send us the ten," is that correct? I am now merely giving you an assumption. A. We had no worries at all about any other than the Mulligan, and they all came in, and there was no feeling of not getting them at all, they all were delivered, we had no worries about them.

Mr. Albert: I offer into evidence, may it please the Court, Respondents' Exhibits 53, 54, 55, 56 and

8374

F. C. Dillon—For Commission—Recalled—Cross.

57. I believe you had these, Mr. Haycraft. Do you want to look at them again?

Examiner Bennett: Any objection?

Mr. Haycraft: No objection to their admission. I didn't think there was any relevancy, or I would have offered them myself. There was no claim, or testimony, that he didn't get any orders.

Examiner Bennett: They are received.

(The documents referred to, heretofore marked for identification Respondents' Exhibits 53, 54, 55, 56 and 57, respectively, were received in evidence.)

8375

Mr. Albert: May I have the Reilly telegram, Mr. Haycraft? I don't think it is in here. It did not go into evidence; the F.O.G.A. telegram to the Boston, incorporating the Reilly telegram.

Mr. Haycraft: The one I had marked for identification?

Mr. Albert: Yes.

Mr. Haycraft: Here it is (handing paper to Mr. Albert).

By Mr. Albert.

Q. I show you Respondents' Exhibit 38-A and B, Mr. Dillon, and ask you if you saw that, or received that?

8376

Mr. Haycraft: That is objected to, not proper cross-examination, irrelevant and immaterial.

Examiner Bennett: That matter was offered and waived.

Mr. Haycraft: Offered by the other witness.

Examiner Bennett: What is that?

Mr. Haycraft: By Mr. Rowse. Mr. Rowse was the man that identified that exhibit. I did not ask this witness anything about it.

Mr. Albert: It is from the Boston Store, your Honor.

Examiner Bennett: I will let him answer, as to whether he saw it. It may be a foundation for something else.

By Mr. Albert.

Q. What was the answer, Mr. Dillon? A. I have not answered. I want to be sure. I have seen this, yes, I know what this is.

Q. Do you know whether or not any answer was made to that telegram? A. We did not answer.

Mr. Albert: I believe, Mr. Haycraft, I have just been informed that there is some doubt in our minds as to whether or not this was actually received in evidence, or merely identified, so I suggest, in order to keep the record straight, that it be offered in evidence now. I know we told you it had been offered.

8378

Mr. Haycraft: I think we withdrew it, in view of the fact that it was already in evidence.

Mr. Albert: I know. But I say, Mr. Keller now tells me he thinks it was only offered for identification and not offered into evidence. I will offer it now, on this identification, that it was received and no answer given to it.

Mr. Haycraft: He doesn't know. He wasn't there.

8379

Mr. Albert: Well, now, are you testifying, or is the witness testifying? He just testified he saw it, and that there was no answer to it.

Examiner Bennett: Has that been numbered as a Commission's exhibit?

Mr. Haycraft: Yes, 571.

Examiner Bennett: If there is any doubt about it, and you want it in the record, let us put it in.

8380

F. C. Dillon—For Commission—Recalled—Cross.

Mr. Haycraft: I offered it in evidence on page 4656—rather, it was identified on page 4656, and offered in evidence on the same page, and then it was withdrawn on page 4657, because it was admitted to be a copy of Respondents' Exhibit 38-A and B, which was in evidence.

Examiner Bennett: Well, in view of the fact there is doubt as to whether it is in evidence, it is received now in evidence.

(The document referred to, marked for identification Commission's Exhibits 571-A and B, was received in evidence.)

8381

By Mr. Albert.

Q. This telegram says: "Please advise by wire Monday afternoon if your store is among eighteen mentioned above." Was there any wire sent in response to this telegram? A. None that I know of; no, sir.

Q. When the Boston Store did not in any way answer this telegram, wasn't that an indication on the part of the Boston Store of its desire to withdraw its declaration of co-operation?

Mr. Haycraft: That is objected to. This witness is not qualified to answer that question. I submit there is no foundation laid.

8382

Mr. Albert: There is no indication by the witness that he is not qualified to do so.

Mr. Haycraft: The witness cannot determine whether it is or not. I am saying so.

Mr. Albert: That is just the point. I object to Mr. Haycraft saying it.

Mr. Haycraft: That is the basis of my objection, if the Examiner please. This calls for a conclusion on the part of some executive of the Boston Store who is in a position to say so, pass upon it.

We had Mr. Rowse on the stand, when he was here yesterday, and he was interrogated about that at that time. Now, this witness, as I say, is not president or vice-president or in any position to say what the interpretation is.

Mr. Albert: He is not exactly an elevator operator in the store. He is divisional merchandise manager, with his departments precisely affected.

Mr. Haycraft: That is the basis of my objection.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Upon receipt of this telegram, was any discussion had amongst the executives of the Boston Store with regard to it? 8384

Mr. Haycraft: What is that question?

(Question read by the reporter.)

The Witness: I was in some discussions, yes, sir.

By Mr. Albert.

Q. Who was present at those discussions? A. Mr. Street, the general merchandise manager. This is all after the receipt of the wire, he just didn't answer it.

Q. At that conference, was it decided not to answer it?

A. No. I think that had been decided by the general management. 8385

Q. Prior to that? A. Prior to that, yes, sir.

Q. As divisional merchandise manager of the Boston Store, and from your discussions with the executives, from your discussion with Mr. Street, the general merchandise manager, can you tell us whether or not the Boston Store, in not answering this telegram, signified its intention of withdrawing its declaration of co-operation?

8386

F. C. Dillon—For Commission—Recalled—Cross.

Mr. Haycraft: I object to that question on the same grounds. It is the same question.

Mr. Albert: I am asking him for his knowledge, as the result of his discussion with the executives, and as a result of his discussion with Mr. Street.

Mr. Haycraft has stated I heretofore cross-examined Mr. Rowse about it, but now we learn that Mr. Street was the general merchandise manager at that time, put in by a man who is no more of an executive in the store than Mr. Dillon is, and inasmuch as neither one is here in a personal capacity, but is testifying as a representative of the Boston Store, it seems to me that any man that represents the Boston Store is qualified to give information with regard to the matter, if he knows.

8387

Mr. Haycraft: I submit, Mr. Examiner, that this is a matter that calls for the conclusion of the witness, a conclusion on the knowledge of the policy and the knowledge of a decision on the part of the store.

It is a conclusion upon a conclusion that he is calling for. And, furthermore, I do not see the relevancy or materiality of the question.

Mr. Albert: The materiality of it is very plain, your Honor. The progress of this hearing has demonstrated that the Commission is seeking to prove that the first knowledge of any of these stores, the first knowledge any of these stores had of the fact they had been red carded, was when they saw it in "Women's Wear," it sounds very dramatic, and very nice, but the fact that every one of them knew before they ever saw it in "Women's Wear" that their declaration of co-operation had been withdrawn by their own personal action.

8388

It may be they saw it in "Women's Wear" for the first time, but they were fully aware of it long

before that; and while I concede that the point is not a very important one, inasmuch as it has been brought out by the Commission in its particular story, I feel it is my duty to again demonstrate the fallacy behind the Commission's proof with respect to the matter.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

by Mr. Albert.

Q: Was Mr. Reilly authorized to send the telegram referred to in Commission's Exhibit 571-A? A. I don't know that.

8390

Q. You have given us very glowing accounts of the excellence of the merchandise manufactured by members of the Guild. Would you be good enough to explain a little more fully just what it is that is so different about Guild merchandise as distinguished from other manufacturers? A. I haven't in any way intended to imply that all Guild manufacturers, or all non-Guild, are in a certain class. I have said that certain manufacturers, whom I mentioned, make a certain kind of goods, or a certain type of goods, or quality of goods, that we have not been able to replace, that we find desirable.

Q. What is there about that quality, or dress, which you cannot replace? A. Any particular resource?

Q. Well, what is there that you cannot replace about Muligan dresses? A. First of all, it is a branded item, they control the name completely. We had it exclusively in this city. We spent money advertising it, windows. It is a certain type of goods, a very youthful distinctive type of clothes, have a very definite flare to them, that is recognizable; they lend themselves to youthful attractive promotion, and we could not replace them. That's part of the reasons.

8391

8392

F. C. Dillon—For Commission—Recalled—Cross.

Q. What are the elements that you look for in a dress, Mr. Dillon, when you go out to buy merchandise? A. Well, I take in the element of style. I take in the element of apparent intrinsic value; I look at it from type standpoint to see if it fits the needs of our stocks.

Q. What elements do you consider in purchasing a dress, that you think it is necessary that a dress should have in order to have customer acceptance?

The Witness: Will you repeat that again?
(Last question read.)

8393

The Witness: Well, first of all, it has got to fit when we get it; it has got to have lines suitable to the likes of the customer; colors have got to be the kind that are needed at the time. We try and buy fabrics that we feel will give suitable service, on stretch or pick-up.

By Mr. Albert.

Q. Is that all, Mr. Dillon? A. I wouldn't say that is all; those are some.

Q. Well, now, I will read back to you what you stated in general words—you stated that the dress must have fit, lines, be of appropriate colors and be serviceable. Now, is there anything else you would like to add to that? A. Of course, the element of price is always ever present.

8394

Q. Is that all? A. That's the main reasons, I would say.

Q. Do you include in the five elements that you have listed, or is a combination of any of them, that the dress should be in fashion? A. I said lines.

Q. Was that what you meant by style? A. Yes.

Q. Well, now, Mr. Dillon, is not the color of a dress rather a negligible item, as being dependent upon the buyer's selection of the colors—I mean, that is something that she will look for, yes, but something that is not im-

portant because colors are something that can very easily be obtained in a dress, it is not the dominating element, is it?

Mr. Haycraft: I object, that is a triple question, Mr. Examiner, and argumentative. He asked three questions.

Examiner Bennett: Read the question.

(Last question read.)

Mr. Haycraft: Four questions.

Examiner Bennett: Well, I will ask you to break up your question, please.

By Mr. Albert.

8396

Q. Is not color, Mr. Dillon, a question of the buyer's selection? A. They have got to have the color to be able to ship it.

Mr. Post: What was that answer, please?

(Last answer read.)

The Witness: If I might explain what I mean by that—we had in June a call for browns, and we had a very difficult time buying them. It is a peculiar thing, but we did.

By Mr. Albert.

Q. Well, was not that due to the fact that there was a shortage in piece goods, it was brown, and not particularly due to the manufacturers' abilities in any way? A. I don't know, they just—they seemed to take the opinion that it was a—you might say—a buyer's judgment against their judgment, and they decided not to buy piece goods, to back up brown in their "cutting tickets."

8397

Q. What do you mean by fit, Mr. Dillon? A. Well, I think that's an adjective, too. The garment is built in proper proportion to the customer, who we are trying to fit.

8398

F. O. Dillon—For Commission—Recalled—Cross.

Q. Is not the quality of the fit, the quality of the workmanship on the dress, in a great measure dependent upon the price that is paid for the dress? A. Well, that's accepted in the industry, different price lines, pay more for labor or less.

Q. And that is something that a manufacturer can very easily either improve or, shall I say, lessen, in his dress, depending upon how much he sells it for? A. Well, I don't understand.

Q. If he gets a good price for it? A. That's the way it works; that way, in the market.

8399

Q. Isn't that so? A. No, I don't understand it that way. I understand in the big volume price lines that the manufacturer is working with his labor, on a certain basis, and he cannot lower his price lines or raise his price lines at his discretion; he has a certain standard of labor.

Q. It is fixed by the union, you mean? A. That is the way I understand it; there are some arrangements there.

Q. So that all manufacturers manufacturing dresses in a specific price line must use the same type of labor, is that not so, from the union? A. Not that I know of, no. I think they pay about the same in each market.

8400

Q. Now, Mr. Dillon, with respect to the various elements that you have referred to, which, in your experience in the dress industry, would you say was the most important from a customer viewpoint? By customer I mean customers of your store.

Mr. Haycraft: If there is any difference. I object to the form of the question. I think there is no foundation laid for it. The witness has not testified there was any.

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: Gentlemen, if you want to confer, I wish you would confer somewhere else.

It is impossible to carry on this examination and a conversation at the other end of this small table. You may answer. Overruled.

The Witness: May I have the question read?

(Last question re-read.)

The Witness: Well, if it doesn't fit, in the final analysis, it doesn't sell. If it is not attractive on a hanger, they generally won't try it on. It is also—

by Mr. Albert.

Q. Well, isn't the first thing that—

Mr. Haycraft: I object.

by Mr. Albert.

Q. (Resumed) —that the customer always looks to see a store, is to try on a dress—

Mr. Haycraft: I object to the witness being interrupted.

Examiner Bennett: Just a moment; finish your answer.

The Witness: It also seems like your question takes an average customer attitude, and we don't deal with people "averagely," we deal with them one at a time, and I can't answer the question, one thing being the thing. It is an element, of a lot of things to make a customer part with her money for a garment.

by Mr. Albert.

Q. Mr. Dillon, the Boston Store endeavors to satisfy its customers and in an attempt to formulate policies to do you take into consideration, do you not, what the gen-

8404

F. C. Dillon—For Commission—Recalled—Cross.

eral average demand is of your customers, is that not so?
 A. If you would make it read demands, I think we would say we do.

Q. Demands. A. Yes.

Q. Very well. Well, now, what is it, in plain language, Mr. Dillon, that a woman looks for first in a dress when she comes into your store to buy it? A. Well, she looks for something that will make her look more attractive.

Q. And is not that first thing that makes her look more attractive the style of the dress? A. If it doesn't fit, it don't mean anything.

Q. I am not saying after she is acquainted and likes the style, Mr. Dillon.

8405

Mr. Haycraft: I object to that question, Mr. Examiner. The witness has answered, and it is argumentative. He just does not like the answer, and does not agree with it. I do not think he should be allowed to argue with the witness.

Examiner Bennett: There is not a question pending, is there?

Mr. Haycraft: I assume that is a question.

Examiner Bennett: Read it.

(Last question read.)

Examiner Bennett: Yes, well, that is not a question.

Mr. Haycraft: I move it be stricken.

8406

Examiner Bennett: Yes, it may be stricken.

By Mr. Albert.

Q. The fit of the dress comes after she has been attracted to it by its style, is that not so? A. It would depend upon the garment. We have a section in our better end that all the merchandise is concealed, the customer is in the fitting room; she says she wants a certain type of clothes; the sales person goes and picks them out and puts them on her.

Q. Let me ask you this, Mr. Dillon: In all your experience in the dress industry have you ever come across a woman who purchased a dress that fit her, and which she liked the material, but who was absolutely dissatisfied with the style of the dress? A. Yes.

Q. You have come across such a woman? A. Yes.

Q. How many such women have you come across?

Mr. Haycraft: Well——

By Mr. Albert.

Q. Are you being perfectly honest with us when you say that, Mr. Dillon? And I do not mean to be unkind in asking that question.

8408

Mr. Haycraft: I object to that question, Mr. Examiner. This witness has not indicated anything but frankness and openness in his testimony. I object to the form of the last question.

Examiner Bennett: Overruled. Go ahead.

The Witness: May I have the question read?

(Last question read.)

Mr. Haycraft: I object to that.

Examiner Bennett: I have ruled, you may answer.

The Witness: I can't answer that, I don't know.

By Mr. Albert.

8409

Q. Is there any explanation that you want to give of what you mean when you say you have come across such women? A. What was that? Did I say I came across it, do you mean?

Q. Yes. A. I don't remember that I said that.

Q. Well, let me then reframe that question and ask you another. Have you come across any women, in your experience in the dress industry, who bought a dress because

8410

F. C. Dillon—For Commission—Recalled—Cross.

it fit, but who at the time when they purchased the dress did not like the style or were dissatisfied with the style?

A. Yes, I have.

Q. Can you recall the circumstances of the purchase?

A. Yes, I think—in the average bridal party, for instance.

Q. Oh, oh, oh!

Mr. Haycraft: Ha, ha!

The Witness: They all wear the same dress, and some of them don't like them, and some of them do, but there are quite a—

By Mr. Albert.

8411

Q. Well, aside from these bridal dresses, which is more or less of a uniform—or maternity dresses, or, shall I say, mourning clothes, is there any woman that ever purchases a dress because it fits her when she does not like the style?

A. Yes.

Q. You still say there are? A. Yes.

Q. Well, now, what—can you give me an example of such a dress? A. Yes, I think that such dresses are sold during the course of a year in stores which are, you might say, hurry-up dresses. A girl gets a call on the telephone at 5 o'clock, and she has a date for 6.30 or 7. She comes dashing in for a new dress, and she has just got to have a new dress, and maybe she don't like it, the certain one she has picked out, but it fits her, and does something for her, and she might ordinarily pass it up, and come back in a week, but she buys it.

8412

Q. By that you mean she is dissatisfied with a few of the little things that may be in that dress, is that what you mean? A. Well, you said dissatisfied with the style?

Q. Yes. A. Didn't particularly care for it?

Q. Yes. A. That's what I mean.

Q. As a matter of fact, when a woman cannot find exactly what she wants, she still picks that particular dress that she doesn't like from among a number of other styles is that not so? A. Yes.

That she likes a good deal less, is that not so? A.

And that she would not be seen wearing at a dog if she could help it, is that not so?

Mr. Haycraft: I object.

Mr. Albert: I was not trying to characterize the dresses that he was selling, Mr. Haycraft; the witness understands me. We are talking about feminine psychology, pure and simple.

Mr. Haycraft: I object to the form of that question.

Examiner Bennett: Overruled.

Mr. Keller: That is a deep subject.

8414

Mr. Albert: I do not qualify as an expert.

The Witness: What is the question?

(Last question read.)

The Witness: I don't see—

Mr. Albert: I did not say dog race.

Mr. Albert.

Now, Mr. Dillon, let us tie this up and get down to

Aside from wedding dresses, maternity dresses, evening clothes, and the occasions when a woman comes and says she must have a dress in the next fifteen or twenty minutes, and she will take anything that looks half-presentable, was there ever a time when a woman would purchase a dress when she is out shopping and looking for dresses, and in no particular hurry, merely because it fits her, or because it is good material, and in spite of the fact that she does not like the style? A. I think there are lots of cases; they do, yes.

8415

Well, can you give me any other examples? A. Yes, I think that a number of women like to come into the store and pick out two or three dresses. They may like one. The sales person may like one on her, and her friend

8416

F. C. Dillon—For Commission—Recalled—Cross.

with her may like one on her, and she will leave our store, say, and go to another store, and pick out two or three dresses. She is buying these dresses, but she don't intend to keep only one of them, and she goes by opinions of other people, and her family, and if she picks out a dress—a sort of committee meeting in lots of homes after they get home.

Q. Yes. It may not be her decision entirely.

Q. But, as a matter of fact, when she finally makes up her mind with respect to it, no matter what influences have been brought to bear on it, she is satisfied with the style, is that not so? A. I wouldn't say so. I have heard younger girls say that their mother made them buy that green dress, and that she cannot wear it, it makes her ill.

8417

Q. But when they bought it, they thought it was pretty good? A. No, the mother may have thought so.

Q. How did the mother select the dress? A. I couldn't say.

Q. The mother thought it was a pretty good dress, did she not? A. Yes.

Q. And she picked it out of all the other styles, did she not? A. Probably so.

8418

Q. Now, taking into consideration all of the things that you see, all of the types of merchandise, and instances, and occasions, wherein a woman may perhaps buy a dress, the style of which she does not like, and granted, for the sake of argument, that your enumeration of instances demonstrates that women do not like the style at the time she bought the dress—what percentage, would you say, of your entire sales of dresses would that take in? A. I can't say.

Q. Can you give me any estimate? A. No.

Q. Would it be a very small percentage? A. I haven't any idea.

Q. Do those occasions happen very often? A. Apparently, or I couldn't have recalled a number of instances right along the row.

Q. I mean, after all, aren't you drawing upon your vast experience in the industry to know that those things do happen, and that we all know that they happen, but that they do not happen very often?

Mr. Haycraft: Is that a question? If it is, I object to it. I objected to one statement a while ago, and we found out afterwards it was a question, and I object to it. If it is a question, I object to it.

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: I will sustain an objection.

By Mr. Albert.

8420

Q. Well, now, Mr. Dillon, is it then your contention, and do you want the Commission to believe, that insofar as woman, in the general sense, that insofar as woman is concerned, when woman comes into a store to buy a dress the most important thing that she looks for first is the style of that dress?

Mr. Haycraft: Read the question.

(Last question read.)

Mr. Haycraft: I object to that question. It is too general, not definite enough, and does not summarize his testimony.

Mr. Albert: I am asking him if that is what he wants us to understand.

8421

Examiner Bennett: I will sustain the last objection. I think it is not a summary of the testimony. His testimony has a trend the other way, it seems to me.

By Mr. Albert.

Q. Is it not a fact, Mr. Dillon, that the most important thing to a woman in a dress, when she comes in, before she

8422

F. C. Dillon—For Commission—Recalled—Cross.

will even attempt to try it on, or see whether there is any good fit to it, or see whether it is serviceable, is the style of that dress?

Mr. Haycraft: That is objected to.

Examiner Bennett: Overruled; he may answer.

The Witness: I think my knowledge of woman psychology is not boundless, but I think the average woman—or woman, as you term her, looking at garments—looks at them in the eyes only of how they will look on her, what they will do for her figure and her attractiveness, the style of them; she may like certain styles, but she knows from her feminine knowledge that that particular thing won't be good for her. She may think that is a fine style all right, but she looks at a dress only through her own eyes, as to what it will do for her, make her more attractive.

8423

By Mr. Albert.

Q. Then, is it your contention that, that the design of a dress is not its most important selling factor? A. I do not know that.

Mr. Albert: May I have the answer to the previous question read?

8424

(Previous answer read as follows: "I think my knowledge of woman psychology is not boundless, but I think the average woman—or woman, as you term her, looking at garments—looks at them in the eyes only of how they will look on her, what they will do for her figure and her attractiveness, the style of them; she may like certain styles, but she knows from her feminine knowledge that that particular thing won't be good for her. She may think that is a fine style all right, but she looks at a dress

only through her own eyes, as to what it will do for her, make her more attractive.")

By Mr. Albert.

Q. Is it your contention then, Mr. Dillon, that if a style is believed by the potential customer not to be suited to her, that she would wear to-day a knee-length style because it did look well on her? A. I have no contention at all along those lines.

Q. Do I understand by your last answer, Mr. Dillon, that a woman will not buy a dress which is in the fashion trend because she does not believe it will look good on her? A. I don't understand that at all.

8426

Q. Well, let us say that to-day long dresses are in style. A. Long dresses?

Q. Long dresses are in style. A. Yes.

Q. And, for some particular reason, long dresses do not look good on a woman. Is it your contention that she will wear knee-length dresses to-day? A. Yes, sir. We all know Queen Mary's hats; we have had the same hat ever since they have taken pictures.

Q. But there is only one Queen Mary, isn't that so? A. All right. You said "woman."

Q. As a matter of fact, Mr. Dillon, what we are referring to, is it not, is a cross-section of your customers?

A. We do not cater to cross-section. We take them one at a time.

8427

Q. You cater to the wants and the needs of each individual woman? A. We endeavor to, yes, sir.

Q. And you carry styles and dresses for each individual woman? A. That is our aim, yes, sir.

Q. Now, Mr. Dillon, isn't it a fact, from your experience, that the vast majority of individual women will only buy a dress if it is in the last word of style? A. Well, my

definition of style is a fashion that is worn by a lot of people, so I would have to answer that with that in mind. That is what style is; if it is worn, it becomes a style.

Q. You are acquainted with the type of dress that is worn by the women in India, aren't you, Mr. Dillon, roughly speaking? A. No.

Q. These loose, flowing garments? A. No.

Q. Haven't you ever been to the movies? A. Yes.

Q. Haven't you see these loose, flowing garments that the women wear in India? A. I don't know whether they are from India, or Hollywood.

Q. I mean, they wear them in India, don't they? A. I don't know.

8429

Q. Haven't you any conception of what is worn in India by the women? A. Nothing definite, no.

Q. Have you any conception of the type of garment that is worn by Chinese women? A. I have seen them wear clothes in San Francisco. I don't know what they wear in China.

Q. Have you any conception of the clothes that are worn by women in Bali-Bali? A. I have seen some paintings.

Q. Or, I should say, perception of the lack of clothes worn by the women in Bali-Bali? A. I have no knowledge of it, no.

8430

Q. You have knowledge only of the clothes that are worn by women in this country, and Queen Mary? A. I do not have any first-hand knowledge, no.

Q. Were you ever in England? A. No.

Q. You saw Queen Mary's clothes in the movies—the hat? A. It was the cause of editorial comment in "Harper's Bazaar"; I think there were quite a series of pictures, for a period of years.

Q. Have you no conception that you could give us of the loose, flowing gowns that are worn by women in India? You seriously want to tell us that?

Mr. Haycraft: I object to that question.

Examiner Bennett: I do not see what it means to our inquiry right now. It may be relevant; I don't know.

Mr. Albert: It is very quickly tied up, your Honor.

Examiner Bennett: All right. Go ahead—he may answer.

The Witness: I don't know anything about what they wear in India.

By Mr. Albert.

Q. Would you say that millions of women in India wear these loose, flowing garments? A. I don't know what they wear. 8432

Q. They are unlike any dress that is worn in this country? A. I don't know what they wear in India at all.

Q. And is the rest of your testimony just as frank as that, Mr. Dillon?

Mr. Haycraft: I object to that question.

Examiner Bennett: Objection sustained.

Mr. Haycraft: It is manifestly improper.

Examiner Bennett: Sustained. Mr. Dillon, you know, is not selling dresses in India, or helping to sell them.

Mr. Albert: But he has testified, if it please the Court, that fashion is set by the fact that many women wear dresses. The very simple question I would like to put to him is if that would be the style in this country. 8433

Examiner Bennett: Isn't that pretty near quibbling?

Mr. Albert: Not quite, your Honor. I have got to quibble with a witness who quibbles.

8434

F. C. Dillon—For Commission—Recalled—Cross.

Mr. Haycraft: Don't quibble with this witness, then. This witness has done no quibbling.

By Mr. Albert.

Q. Is it your contention, Mr. Dillon, that insofar as you need styles for the dresses that are sold in your store, you can obtain those styles, for the most part, only from Guild manufacturers? A. May I have that question?

(Question read.)

The Witness: May I have it again, please?

(Question re-read by the reporter.)

8435

The Witness: I have not attempted to state any relative proportion of our need of Guild merchandise. I don't know what they are making now. I only know from the type of house, and I do know that we need certain things that we do not now have, and I would very much like to have the opportunity to have my buyers and myself go into those houses that we are barred from, and see what they have got, be able to buy them.

By Mr. Albert.

8436

Q. In other words, it is just an intellectual curiosity on your part to see what the Guild manufacturers are selling, not predicated upon any knowledge of their past ability to manufacture merchandise? Is that what you are complaining about?

Mr. Haycraft: I object to that. That is not what he said.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Now, Mr. Dillon, on page 4687 of the record— A. Pardon me. May I have a drink of water?

Examiner Bennett: You may have a recess to get a drink of water, if you wish.

Mr. Albert: May we have a general recess now?

Examiner Bennett: Very well.

(A short recess was thereupon taken.)

Examiner Bennett: You may continue, Mr. Albert.

Mr. Albert: What was my last question?

(Last question read, as follows: "Q. Now, Mr. Dillon, on page 4687 of the record——")

By Mr. Albert:

Q. (Continuing) —you testified that you have not been able to replace the dresses that you had formerly obtained from the Dolces Dresses, C. H. D. Robbins and Louise Mulligan, and you stated those are distinct types of houses. You also testified on page 4690 of the record that your customers come to you daily in considerable numbers, "expecting to find in our store the best merchandise on the market, but we, in my opinion, do not have it."

8438

On page 4699 of the record, you testified, "We apparently haven't got the right dresses at those prices."

On page 4705 of the record, in referring to advertisements appearing in "Vogue" and similar publications, and your inability to join in those advertisements, you said that it offers an opportunity to capitalize on the authenticity of the clothes.

8439

Were not all those references to your necessity to obtain merchandise from Guild sources, referring more to the style of the dresses furnished by Guild sources than to any other element? A. No.

Q. Is it your contention that non-Guild members cannot get as good material as Guild manufacturers for their dresses? A. I do not make any contentions at all on the thing.

8440

F. C. Dillon—For Commission—Recalled—Cross.

Q. Is it your contention that non-Guild members cannot obtain as good labor to turn out a dress in the same needed fashion as Guild members? A. I do not make any contention along those lines at all.

8441

Q. You have given various reasons for the fluctuation, or perhaps I should say the decrease, in the sales volume in Departments 334, 335, 354 and 374 for the period February, 1936, to July, 1936, in which period you first took over those departments, in comparison with the period February, 1935, to July, 1935, during which time you were not in charge of those departments. Would you not add as an element in the percentage of decrease in the sale volume the reflection in those departments, in their sales, of your opinion that style is not the most important element in the purchase of a dress to a woman?

Mr. Haycraft: That is objected to, Mr. Examiner.

Mr. Albert: I think it is a perfectly fair question.

Examiner Bennett: I will let him answer.

Mr. Albert: I just want to reduce this whole line of testimony, now.

Examiner Bennett: All right. If he has an answer, he may give it.

The Witness: May I have the question, please?

(Question read by the reporter.)

The Witness: I cannot understand that at all.

Mr. Albert: All right. I will reframe it.

8442

By Mr. Albert.

Q. You have given us figures which generally show that from February, 1936, to July, 1936, four of your departments, for the most part, had a decrease in total sales volume, is that correct? I am referring to the exhibits that you put in evidence. A. Let me see the exhibit, will you, please?

Q. Commission's Exhibits 587 and 588. A. May I have the question?

(Question read.)

By Mr. Albert.

Q. Over the comparative period in 1935? A. This refers to three price lines only, in each instance.

Q. Yes. A. The figures I am talking about here, this is a true picture. It is not a statement of the entire departmental operations.

Q. Well, insofar as it concerns those three departments, it shows generally that in those departments there was a decrease in sales volume over the similar period of last year, isn't that so?

8444

Mr. Haycraft: That is objected to. It is contrary to the witness' testimony. He has restricted his testimony to three price lines.

Mr. Albert: I am sorry.

By Mr. Albert.

Q. Three price lines in those departments? A. Yes.

Q. And you have offered those as being indicative of the departments, have you not, or is it testimony or is it the intention of the Boston Store that the decrease was only in those three price lines in those departments? A. In looking at this department here, I consider these the elements of where we live more or less in them, they are the heart price lines.

8445

Q. Yes. A. And in getting a picture of the trend of a department, I try to keep to the fundamentals. Those are the three main price lines, the ten cost, ten, eleven, twelve, in there; that is quite a market; and the fifteen to eighteen dollar cost, that is another big market, twenty-nine dollar retail.

8446

F. C. Dillon—For Commission—Recalled—Cross.

Q. Then you offer these figures as a cross-section of the department? A. They are the price lines of these three departments.

Q. In those three price lines there was a decrease in the total sales volume in 1936, from February to July, over the same period in 1935, isn't that so? A. No. In 1935 we showed a big increase.

8447

Q. You complain, do you not, that in Department 374, for the period February 1st to July 31st, 1936, in your \$12.95, \$16.95 and \$19.95 price lines, there was a decrease of 45 per cent.; 40 per cent. and 55 per cent., respectively, over the same period in 1935, do you not? A. If it is what is on the paper, I do.

Q. Those are the figures, yes. You also complain, do you not, that in Departments 334, 335 and 354, in the \$16.95 and \$29.75 price lines, there was a decrease over the same period in 1935 of 4 per cent. and of 55 per cent., respectively, is that not so? A. If that is on the paper, I do.

Q. You did not take over these departments until February of 1936, isn't that so? A. Yes, sir.

Q. There was another gentleman in charge of those departments in 1935, isn't that so? A. Yes, sir.

Q. You have given us various opinions as to the reasons for this decrease over the similar period in 1935, is that not so? A. I don't understand that.

8448

Q. In explaining these figures, you have set forth as your opinion various reasons as to why there was a decrease in these departments, haven't you?

Mr. Haycraft: That is objected to; there is no such testimony. The figures were submitted and identified to support his opinion of what the effect of the red carding was. He did not do what counsel said he did. He referred to these as confirming what he had already testified to.

Examiner Bennett: I think he went into some detail. He may answer.

Mr. Albert: Will you read the question?

(Question read by the reporter.)

The Witness: My whole feeling about these figures is that this reflects the merchandise that is available at these price lines last year and this year. I read from these figures that apparently we did not have the right merchandise this year, compared to last year.

By Mr. Albert.

Q. And that is why there was a decrease? A. Yes, sir. 8450

Q. Now, would you add as an element to be considered, as a reason to be considered for that decrease, the fact that since you have taken over the departments, and under your aegis, the conception under you is that style is not the most important element to be considered in furnishing dresses to women customers?

Mr. Haycraft: That is objected to. There is nothing to show that it was any different before, or at the present time. There is no probative value to that question. It is irrelevant and immaterial, no foundation laid.

Examiner Bennett: It is speculative, but I will let him speculate. Go ahead.

Mr. Albert: That is all we have had this morning, your Honor, is speculation. 8451

Mr. Haycraft: I object to that, and move it be stricken.

Mr. Albert: There has been a lot of short selling this morning.

Mr. Haycraft: You asked for it, and got it.

Mr. Albert: I am perfectly satisfied, Mr. Haycraft, perfectly satisfied the way it stands.

8452

F. C. Dillon—For Commission—Recalled—Cross.

Examiner Bennett: Go ahead with the answer.

The Witness: May I have it again?

Examiner Bennett: It is very interesting, this conversation between you and Mr. Haycraft, but it is not getting us very far.

(Question read by the reporter.)

By Examiner Bennett.

Q. Can you answer that question? A. I can answer it.

By Mr. Albert.

8453

Q. If you say you would rather not answer it, Mr. Dillon, I will withdraw the question. A. I would rather not.

Q. You would rather not? A. I would rather not answer it. I don't understand what you are driving at.

Mr. Albert: I will withdraw it.

By Mr. Albert.

Q. Now, Mr. Dillon, what is it that is printed in "Vogue," in "Harper's Bazaar," and these various magazines that you have testified to as setting forth the trend of the fashions? A. What is there that is printed?

Q. Yes. A. Well, we have them here, if you would like to refer to them.

8454

Q. I would like your description of them. A. They are editorials, fashion editorials of magazines.

Q. I mean, as regards the fashion; I don't mean what the editorials are, puffing, and everything else. A. The editorials are the heart of the magazine, in those instances.

Q. I am sorry. My statement may reflect the fact I do not read "Vogue." Tell us what there is in it. A. The custom is to have the fashion editor of "Ladies' Home Journal," for instance, go around the market, the manufacturers' showrooms, see what is going on, even do a little

constructive suggesting sometimes in lines, and they select various clothes which they consider to be very much in the mode, or which are about to become the mode in their judgment, and they present them to their readers, who pay the price to buy these magazines for that information, and they present this information to them on what is what in clothes.

Q. Is it true, and I am now asking you for information, that the only thing that a woman can see in "Vogue," when a dress is set forth in "Vogue," is the style of that dress? A. I still come back to my statement, whenever they look or think about fashions, they only think of it put on themselves; it can be done in color, showing a lot of accessories, and how they can use it; it can be done in just as many inventive ways as the magazine can to make it appeal to her. 8456

Q. Then, is it your contention that the Guild manufacturers are more successful than any other manufacturers in getting up styles which will appeal to women from day to day, time in and time out? A. I don't like the word "styles." I think they get a better garment, which involves more than what I think you call style.

Q. What is a "hot" number, Mr. Dillon? A. Oh, I don't know whether you mean—

Q. What? A. What usage do you make of that? What do you mean by that, yourself?

Q. Well, referring to dresses. A. Yes.

Q. Now, in a dress, what constitutes a "hot" number? A. With me? 8457

Q. A "hot" number is a term used in the industry, is it not, in reference to dresses? A. There are all kinds of different ideas in the market; if you want my idea of what a "hot" number is, I will tell you. I don't know what.

Q. Is your conception of what is a "hot" number different from the industry conception of a "hot" number? A. I don't know.

8458

F. C. Dillon—For Commission—Recalled—Cross.

Q. Well, let us have your definition of a "hot" number.
 A. A number that sells very rapidly, and allows us to re-order.

Q. What is the most important element in a dress that makes it a "hot" number? A. The whole dress, everything.

Q. Would you say that a Mother Hubbard, of excellent material, excellent workmanship and excellent needlework, was a "hot" number, or would it become a "hot" number? A. For the Mother Hubbard department, it might be.

8459. Q. Aside from that, it would not be any "hot" number, would it? A. I don't know.

Q. And then, as I take it, in so far as you are concerned, Mr. Dillon, you cannot say that the style of a dress is the most important thing to a woman? A. I would not say that, no.

Q. Very well. How many dresses would you say are sold a day in the Boston Store?

Mr. Haycraft: That is objected to, irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: I will sustain it.

By Mr. Albert.

8460. Q. There is in evidence Commission's Exhibit 558, Mr. Dillon, demonstrating that from the period September 10, 1935, until February 11, 1936, the Boston Store returned eighty-four dresses as having been adjudged copies of other dresses. Would you say that the Boston Store sells more or less than eighty-four dresses a day?

Mr. Haycraft: That is objected to, Mr. Examiner, not proper cross-examination.

Mr. Albert: May I ask, why it is not proper cross-examination, in the light of this?

Mr. Haycraft: May I just be allowed to talk to you and make my objection, without being interrupted?

Examiner Bennett: Go ahead, make your objection.

Mr. Haycraft: This exhibit was not identified by this witness, he knew nothing about it, it was before his time. It was identified by a previous witness on the stand, who was cross-examined with respect to it. I object to it as not proper cross-examination.

Mr. Albert: I respectfully urge, if it please the Court, that the previous witness was put on as a representative of the Boston Store, not as Mr. Rowse. We are not interested in Mr. Rowse, and, with all due respect to the gentleman on the stand now, he is put on as a representative of the Boston Store, and not as Mr. Dillon personally, and that any cross-examination with respect to this particular store, which is a particular niche in this hearing, can be had of any witness representing this store.

8462

Mr. Haycraft: That is about the weirdest interpretation of the law of evidence in a trial, and of cross-examination—

Mr. Albert (interposing): I cannot help it if Mr. Haycraft is having nightmares.

Mr. Haycraft: —that I have heard of in a long time.

8463

Examiner Bennett: Well, of course, a man hardly has knowledge of things that he has not testified about.

Mr. Albert (interposing): That does not mean that he has not the knowledge of it, your Honor.

Examiner Bennett: I sustain the objection. There is no use of talking further upon it.

8464

*Proceedings.**R. E. Vogt—For Commission—Recalled—Direct.*

Mr. Albert: Exception.

Examiner Bennett: You may have an exception.

Mr. Haycraft: I wish to point out at this time, Mr. Examiner, that pursuant to a statement made by counsel yesterday, we have obtained other witnesses and have them waiting to testify.

Examiner Bennett: Yes, well, I do not see that—I say there is nothing to be done except go ahead and make your objections as the points come up.

Mr. Albert: That is all.

Examiner Bennett: Anything further?

8465

Mr. Haycraft: No redirect.

Mr. Albert: Nothing else; I suggest that all the testimony be stricken out, your Honor.

(Witness excused.)

Examiner Bennett: Do you desire to call another witness?

Mr. Haycraft: Yes, I have another witness. Just a moment, there is one witness that I would like to call for just one exhibit. Mr. Vogt, come back to the stand for just a moment.

8466

R. E. VOGT thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

Direct examination by Mr. Haycraft.

Q. Mr. Vogt, I call your attention to Commission's Exhibit No. 591 for Identification, and ask you if you know anything about that paper (indicating)? A. I do.

Q. What is it? A. It is a statement of sales, Louise Mulligan dresses, made between August, 1935, and March, 1936, in six price lines.

R. E. Vogt—For Commission—Recalled—Direct.
Mrs. Frances Malsh—For Commission—Direct.

8467

Q. Did you prepare it? A. It was prepared under my direction.

Q. Have you checked it against the record? A. Yes.

Q. And you know it is correct? A. Yes, sir.

Mr. Haycraft: I offer it in evidence.

Examiner Bennett: Is that all?

Mr. Haycraft: He may want to ask him some questions regarding it.

Mr. Albert: No objection.

Examiner Bennett: Received.

(Thereupon the paper referred to, heretofore marked for identification Commission's Exhibit 591, was received in evidence.)

8468

(Witness excused.)

Mrs. FRANCES MALSH was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

The Witness: I just want to say that my hearing is not keen, and I would like to hear everything.

Examiner Bennett: I see.

Direct examination by Mr. Martin.

8469

Q. State your full name. A. Mrs. Frances Malsh.

Q. Now, Mrs. Malsh, where do you live? A. 5120 Harper Avenue.

Q. Chicago? A. Yes, Chicago.

Q. What business are you in? A. Well, in the ladies' apparel—that is, I was.

Q. Where is your place of business? A. At the same address, 5120 Harper Avenue.

8170

Mrs. Frances Malsh—For Commission—Direct.

Q. Is that a store, or a residence? A. No, it is a residential, it is an apartment, high-class apartment building.

Q. Now, just what do you sell, just what do you include in your apparel line? A. Well, ladies' outer-wear and-silk garments, and also knit-wear.

Q. Now, Mrs. Malsh, did you ever hear of an organization known as the Fashion Originators Guild of America?

A. Yes, I did.

Q. When did you first hear of that organization? A. Well, when I went to New York, two years ago.

Q. How long have you been in business? A. Very close to fifteen years.

8171 Q. Have you always conducted the same type of business? A. No, no, I had a floor shop, a very large floor shop, downstairs shop, street shop.

Q. When was that? A. Well, that was when I first started.

Q. And when did you move your business to where you are now? A. Well, I had a very unfortunate occurrence.

Q. How long have you been in your present location?

A. Well, I have been in the present location four years, almost four years, and I have been conducting an upstairs shop for approximately nine years, five years I was downstairs on the floor.

By Mr. Martin.

8172 Q. Mrs. Malsh, have you ever heard of the Michigan Avenue Guild of Chicago? A. Well, I did after I received a letter for me to call on Mr. Fletcher.

Q. Do you recall when that was? A. Well, right after I returned from that trip to New York.

Q. Which trip? A. When I first heard of the Originators Guild.

Q. When you first heard of the F.O.G.A.? A. Yes. I signed an agreement there that I would join, of course

Mrs. Frances Malsh—For Commission Direct.

8473

not knowing that—asked me to, as a matter of fact, sir, and then after refusing me they asked me to call on Mr. Fletcher.

Mr. Albert: Now, I ask that the answer of the witness be stricken; it is not responsive to the question.

Mr. Martin: I think it was responsive, your Honor.

Examiner Bennett: It may stand.

Mr. Albert: Exception.

By Mr. Martin.

Q. Now, Mrs. Malsh, I hand you Commission's Exhibit No. 225 for Identification, and ask you can you identify that (indicating)? A. Yes, I can.

Q. What is it? A. That is my signature.

Q. Well, what is it, your signature to what? A. Well, it is an application to the Guild.

8474

Mr. Albert: Now, if it please the Court, may I ask in referring to Guilds, distinguish as to what she is referring to. There has now been reference to the Michigan Avenue Guild and to the Fashion Originators Guild.

Mr. Martin: All right, just a moment.

By Mr. Martin.

Q. Read it, Mrs. Malsh, and tell us what Guild you refer to. A. "I do hereby apply for membership"—do you want me to read it out loud or to myself?

8475

Mr. Albert: No.

Mr. Martin: No, just read it to yourself.

The Witness: Well, I suppose that meant, the general Guild, I don't know whether this means—it is the Guild in New York, I suppose.

8476

Mrs. Frances Malsh—For Commission—Direct.

Mr. Albert: I object.

The Witness: The real Guild, and this is a part of it.

Mr. Albert: If it please the Court, I object and ask that it be stricken. We are not interested in what she supposes it refers to. The question was what Guild does it refer to.

By Mr. Martin.

Q. Read it and see what name is mentioned in there.
A. Michigan Avenue Guild.

8477

Mr. Martin: I offer that in evidence (referring to Commission's Exhibit 225).

(Whereupon, at 2.15 o'clock P. M., August 28, 1936, the hearing in the above-entitled matter was adjourned, to reconvene on Monday, August 31, 1936, at Minneapolis, Minnesota, in Room 307, Old Federal Building, at 10 o'clock A. M., Central Standard Time.)

8478

Room 307, Federal Building,
Minneapolis, Minnesota,
August 31st, 1936.

Met, pursuant to adjournment, 10 A. M., C.S.T.

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing
for the Federal Trade Commission.

8480

M. A. ALBERT, Esq., GEORGE FELDMAN, Esq., and HERBERT
S. KELLER, Esq., appearing for the Fashion Orig-
inators Guild of America, Inc.

HAROLD G. CANT, of Kingman, Cross, Morley, Cant & Tay-
lor, 1010 Security Building, appearing for The Dayton
Company, Minneapolis, Minn.

SAMUEL H. MOSLON, of Brill & Moslon, 500 Builders Ex-
change Building, appearing for Roy H. Bjorkman and
Roy H. Bjorkman, Inc., and Minneapolis Fashion
Guild, Minneapolis, Minn.

PROCEEDINGS.

8481

Examiner Bennett: Be in order, please.

Mr. Haycraft: Mr. Examiner, I would like to have fif-
teen minutes.

Examiner Bennett: Do you want some more time?

Mr. Haycraft: Give me until—

Examiner Bennett: All right, sir.

(A short recess was taken.)

8482

*Proceedings.**Roy H. Bjorkman—For Commission—Direct.*

Examiner Bennett: Are you ready?

Mr. Haycraft: Yes.

Examiner Bennett: Be in order, please. You may proceed.

Mr. Haycraft: Mr. Bjorkman, will you come over, please? You will be sworn.

ROY H. BJORKMAN thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

8483

Direct examination by Mr. Haycraft.

Q. Will you state your full name? A. Roy H. Bjorkman.

Q. Address? Where do you live? A. Home address or the business address?

Q. Give us both. A. 4509 Moreland. 931 Nicolett Street, business address.

Q. What business are you engaged in? A. Ladies ready-to-wear.

Q. At the address you have last given? A. 931 Nicolett, yes.

Q. How long have you been in that business, Mr. Bjorkman? A. In this business?

Q. Yes. A. Twenty-seven years.

Q. Not all at that address, though? A. Thirteen.

Q. Do you specialize in any particular type of ladies ready-to-wear? A. Well, medium and the high grade.

Q. What price range do you sell at retail? A. We sell sport things from \$10 and up, silk dresses from \$15 and up, coats from \$19.95 and up, furs from \$100 and up. During the summer period we naturally have the less expensive cotton things from \$5.95 and up.

Q. Who would you say were the principal competitors that you have in that particular line of merchandise? A. Well, unfortunately, we think everybody on Nicolett Avenue, ha, ha, ha!

Q. Name some of your principal competitors? A. Principal? Well, Raleighs, Jackson-Graves, Young and Quinlan.

Mr. Albert: Would you mind going a little slower? Jackson-Graves?

The Witness: Jackson-Graves, John W. Thomas, Harolds, Dayton Company, Powers. Those are our principal—and the Jenny Lee, Dubois, Donaldson.

By Mr. Haycraft:

Q. And have they been your principal competitors, say, during the past ten or twelve years? A. Yes.

Q. Are some of them in and out? Have some of them come in and gone out? A. No, they have been all here except Harolds. Harolds was organized about two years ago. The Atkinson store had been in the picture. They have consolidated with Thomas.

Q. When did that consolidation take place? A. In the last year.

Q. Now, these stores that you have named, are they engaged in the sale of ladies' ready-to-wear in the same price range that you have indicated in your reply or do they include the wider price ranges in their business? A. Naturally a little bit wider, because they go into the very cheap—I mean in the basement ranges which we do not carry.

Q. Without imposing on your modesty, I would like to ask whether your store is considered one of the best stores in Minneapolis? A. Yes, we are considered probably the most exclusive specialty store in Minneapolis, because we got about \$135,600 in walnut fixtures which I think gives it a good front.

2488

Roy H. Bjorkman—For Commission—Direct.

Q. I will give you a chance to do some advertising. A. We don't know whether that is good advertising or not any more.

Q. Have you been active at all in trade association work among the retail dealers in ladies' ready-to-wear in Minneapolis?

Mr. Moslon: Just a moment. Just a moment. Objected to as irrelevant and incompetent, purely intrastate transaction.

Examiner Bennett: Read the question and the objection.

(The record was read.)

8489

Mr. Haycraft: Foundation.

Examiner Bennett: Overruled. I am going to hear what you want to bring out.

Mr. Moslon: Please note an exception.

Examiner Bennett: Overruled. I am going to hear what is going to be brought out.

The Witness: Yes; I have been—I have been active ever since I have been in Minneapolis as far as our own Ready-to-Wear Group, which has always met—always met periodically here in the discussion of sale periods and all that.

Q. Have you had a formal organization during the past ten years?

8490

Mr. Albert: That is objected to, if it please the Court.

Mr. Moslon: May we note the same objection to this question, please?

Examiner Bennett: Overruled. Overruled.

Mr. Moslon: Exception noted, please.

Mr. Albert: Objected to on the part of the respondent F.O.G.A. as calling for a conclusion of the witness, no proper foundation has been laid.

Examiner Bennett: Yes. I have already ruled on it. Go ahead.

By Mr. Haycraft.

Q. Go ahead.

Examiner Bennett: You may answer.

The Witness: May I have that again? Did you say "have"?

(The question was read.)

The Witness: Well, it all depends on what you mean here by a formal. We have never had a formal organization, no.

8492

By Mr. Haycraft.

Q. Are you familiar with the Fashion Originators Guild of America, Incorporated? A. Very much, sir.

Q. When did you first hear of that organization? A. Well, that is going back quite a ways. I think it was about the fall of 1932, I believe.

Mr. Haycraft: Mark this for identification.

(The paper referred to was marked Commission's Exhibit 592 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 592 for Identification and ask if you can identify it? A. Yes, sir, I can identify that.

8493

Q. What is that? A. Why, it was the meeting we had—

Q. Just a minute. I am not asking you what the subject matter of it is. I am just asking you what the paper is. A. I am trying to explain it, if you will be patient a moment.

8494

Roy H. Bjorkman—For Commission—Direct.

Examiner Bennett: Just the date and the parties.

The Witness: Oh.

Examiner Bennett: Give the date.

Mr. Haycraft: They won't allow you to tell what is in it.

The Witness: December 28th, 1932.

Examiner Bennett: Letter from whom to whom?

The Witness: Letter from Mr. Bjorkman to Mr. Golby of the Fashion Originators Guild of America.

By Mr. Haycraft.

8495 Q. Did you write the original of that letter? A. Yes, sir.

Q. This is a carbon copy? A. That is right.

Examiner Bennett: Was it sent—

By Mr. Haycraft.

Q. And the original was sent to Mr. Golby, was it? A. That is right.

Mr. Haycraft: I offer that in evidence.

(The paper referred to was handed to Mr. Albert.)

Mr. Albert: That is objected to, if it please the Court, upon the ground no proper foundation has been laid, not binding upon the respondent F.O.G.A. and not within the issues of the complaint in so far as the matter—concerns matters purely intrastate and without the jurisdiction of the Commission.

8496

Examiner Bennett: Will you let me see the document?

Mr. Haycraft: Just a moment. Counsel is reading it.

(Commission's Exhibit 592 for Identification was handed to the Examiner.)

Examiner Bennett: Have you the letter to which this was an answer?

The Witness: I don't think that there was an answer to that letter.

Examiner Bennett: Well, it was written evidently in answer to another letter, "replying to your letter of the 24th," and so on.

Mr. Haycraft: I couldn't find it.

The Witness: Isn't it there? I don't know.

Examiner Bennett: All right.

The Witness: That is all my secretary could find. 8498

Examiner Bennett: I will overrule the objection and receive it.

Mr. Albert: Exception.

(The paper referred to, heretofore marked for identification Commission's Exhibit 592, was received in evidence.)

Examiner Bennett: I understand that there is no point made of the paper being a copy? The Commission can demand the original.

Mr. Albert: May I point out to your Honor that in keeping with the policy of the respondent F.O.G.A. and not contesting the fact that originals are not presented—

Examiner Bennett: Yes. 8499

Mr. Albert: In that sense I have no objection to the letter except that we have no copy of the original and haven't it in our files, and I have asked Mr. Post as to whether or not he recalls having received such a letter and he says that he does not.

Mr. Haycraft: Does Mr. Post have the letter?

Examiner Bennett: I don't care about the question, I just wanted to be sure that it was not raised.

8500

Roy H. Bjorkman—For Commission—Direct.

Mr. Albert: No, your Honor.

Mr. Haycraft: I would like to inquire of the respondents if they have the letter of December 24th, from Mr. Golby to the witness?

Mr. Post: December 24th?

Mr. Haycraft: Yes. 1932.

Mr. Albert: No.

The Witness: I can elucidate a little bit further on that if you would like to have me.

By Mr. Haycraft.

Q: If you can explain—

8501

Examiner Bennett: Give the whole story.

Mr. Haycraft: I will get at it in a moment. You will have it in just a moment. I want to see if this other letter is here, that is all.

Examiner Bennett: All right.

Mr. Haycraft: Did you find it, Mr. Post?

Mr. Post: No.

Mr. Haycraft: All right.

By Mr. Haycraft.

Q. Now, then, I will ask the witness. In this first paragraph it says: "Replying to your favor of the 24th, we have already called a meeting of the outstanding merchants which will be held at the Athletic Club Friday afternoon, December 30th."

8502

The second paragraph says: "I will endeavor to form an organization that will co-operate and affiliate with the parent organization in New York. I will keep you posted on the outcome."

Now, I ask you, Mr. Bjorkman, what preceded this letter to which you referred to?

Mr. Albert: That is objected to, if it please the Court, as incompetent, immaterial, outside of the

scope of the investigation by the Federal Trade Commission, and in no way binding upon the respondent F.O.G.A. We are back in 1932 now.

Examiner Bennett: I will overrule the objection. You may answer.

Examiner Bennett: I shall overrule the objection. He may answer.

The Witness: I was very much interested in the Fashion Originators Guild. I have been in this business twenty-seven years and I was very enthusiastic about it. We discussed it naturally with a few of the outstanding manufacturers, including Mr. Rentner and Mr. Golby. That was before Mr. Post was with the organization. We had lunch together in New York. I was heartily in accord with their ideals and their purposes and I naturally said, "Okay. I will go home and see if I can get this crowd together as a local Fashion Group." That was all—

8504

Mr. Maslon: You have answered the question.

Mr. Martin: I object. Let the witness answer the question without interruption by counsel.

Mr. Maslon: He has answered.

Mr. Martin: I object to any interruption.

The Witness: In fact, I was practically through. I called the meeting and we sold them all on it and they were all in favor without a dissenting vote, with one or two exceptions, but they all saw the ideal possibilities, so they were all in favor of giving it a trial.

8505

Mr. Haycraft: I will join with counsel for respondent and ask the witness to try to confine his answers to my questions. I do not want you to volunteer anything.

The Witness: You asked me what occurred, and that was the inspiration of the letter.

8506

*Roy H. Bjorkman—For Commission—Direct.**By Mr. Haycraft.*

Q. Had there been a meeting prior to this of the Minneapolis group? Had you been to New York? A. On the part of the Guild?

Q. Yes. A. No.

Q. Had you been to New York on the part of the Guild?

A. No.

Q. You were in New York on other business? A. No.

Q. Do you have a brother in New York buying dresses in New York? A. No, I don't know of any.

Q. You don't know of any? A. No.

Q. Were you ever engaged in that business? A. No.

8507

Q. As I understand your testimony, while you were in New York on your business trip, you discussed this matter of the Guild? A. Well, as a matter of fact, we discussed it in a casual manner, their aspirations.

Q. Did they say anything to you about getting the Minneapolis group to co-operate? A. No, no. In fact, I really volunteered.

Q. You volunteered? A. Yes.

Q. Then what did you do after you got home? A. We just called a meeting at the Athletic Club and discussed it, that was all. Nothing formal was done.

Q. Let us take it up step by step.

(Thereupon a paper was marked Commission's Exhibit 593 for Identification.)

8508

By Mr. Haycraft.

Q. First I will ask you if you recall the context of the letter of December 24th from Mr. Golby? A. I am sorry, I don't, only that it was just a short letter, thanking me and of appreciation for my intended support and asking me if I had called the group of ladies' ready-to-wear merchants together. That was all.

Q. Now, I show you Commission's Exhibit No. 593, and see if you can tell me what that is? A. Yes, sir.

Q. Did you send the original of that letter to Mr. Golby?

A. Yes, sir.

Q. This is a carbon copy? A. That is right.

Q. What is the date of it and who signed the original?

A. December 30th, and I signed the original.

Mr. Haycraft: I offer the paper in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

Mr. Haycraft: We have two counsels here, Mr. Examiner, who want to look at the paper.

Examiner Bennett: I want to tell you there is very much of an echo derived from where you are sitting, so speak rather plainly. Do you want me to look at it? That is the one you are offering? 8510

Mr. Haycraft: That is the one.

Examiner Bennett: It will be received.

(The paper referred to, heretofore marked Commission's Exhibit 593 for Identification, was received in evidence.)

(Thereupon papers were marked Commission's Exhibits 594 and 595 for Identification.)

By Mr. Haycraft.

Q. Mr. Bjorkman, do you remember the personnel that you appointed, as indicated in your letter of December 30th, 1932? 8511

Mr. Albert: That is objected to, if the Court please, as immaterial and irrelevant, not binding upon the respondent F.O.G.A., outside of the issue of the complaint.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

The Witness: I honestly don't believe I can.

8512

Roy H. Bjorkman—For Commission—Direct.

By Mr. Haycraft.

Q. Was Donovan, of Dayton Company? A. I think Mr. Larson of Dayton was, if my memory is correct. I really would hate to say, but if my memory is correct, Mr. Larson of Dayton and Mr. Laihff and Mr. Young, Quinlan and myself.

Mr. Maslon: Will you just answer the question, and don't guess, please?

By Mr. Haycraft.

8513

Q. I hand you Commission's Exhibit No. 594 for Identification, and ask you if you can identify that? A. Yes, sir.

Q. Did you receive it? A. Yes, sir.

Q. From whom to whom? A. Mr. Golby to myself.

Dated? A. January 3rd, 1933.

Mr. Haycraft: Offer this in evidence.

Mr. Albert: It is objected to, if it please the Court, as outside of the scope of the complaint and not within the jurisdiction of the Federal Trade Commission.

Mr. Haycraft: May I ask a question in respect to that last objection, Mr. Examiner?

Examiner Bennett: What?

8514

Mr. Haycraft: Before you rule I would like to ask the witness a question, before you rule on the objection.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. Is this letter in reply to your letter of December 30th, 1932, or does it relate to the same subject-matter? A. Let me see that letter, please. (After examining let

Roy H. Bjorkman—For Commission—Direct.

8515

ter) This was not in reply to any letter. This was just a volunteered letter;

Q. This letter here, (indicating)? A. That is right.

Q. That is right? A. Yes, sir.

Examiner Bennett: Overruled. Received.

(The letter referred to, heretofore marked for identification Commission's Exhibit 594, was received in evidence.)

By Mr. Haycraft.

Q. Now, it says in this letter from Mr. Golby, dated January 3rd, 1933, Commission's Exhibit No. 594, "We are anxiously awaiting the report of your Committee is drafting and trust that it will be favorable. If you desire copies of minutes of the various Retail Guilds that are now functioning for the benefit of the ready-to-wear business, please do not hesitate to call upon us and we will forward to you such copies as we have on hand." Do you recall whether or not you asked for such copies?

8516

Mr. Albert: Objected to; immaterial.

Examiner Bennett: Overruled. He may answer.

The Witness: I don't recall asking for it.

By Mr. Haycraft.

Q. I asked you if you recall asking for them? A. I don't recall.

Q. I show you Commission's Exhibit No. 595 for Identification and ask you if you can identify it? A. Evidently I did.

8517

Q. Do you identify this as a copy of the telegram? A. Yes.

Q. Who sent it? A. I did.

Q. To whom? A. James Golby.

Q. What date? A. January 7th.

8518

Roy H. Bjorkman—For Commission—Direct.

Q. What year? A. 1933.

Mr. Haycraft: Offer it in evidence.

Examiner Bennett: 595?

Mr. Albert: It is objected to, if the Court please, outside of the scope of the Commission's investigation.

Examiner Bennett: May I see the telegram, please?

(Telegram handed to the Examiner.)

Examiner Bennett: Overruled, and received.

(The telegram referred to, heretofore marked for identification, Commission's Exhibit 595, was received in evidence.)

8519

(Thereupon papers were marked Commission's Exhibits 596-A, B and C for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 595 for Identification, and ask you if you can identify that?

Examiner Bennett: That is three sheets.

Mr. Haycraft: Three pages.

The Witness: Yes, sir.

By Mr. Haycraft.

8520

Q. Did you receive that? A. Yes, sir.

Q. From whom? A. Maurice Reutner.

Q. Who was he at the time? A. Chairman of the Fashion Originators Guild of America.

Q. Under what date? A. December 6th, 1932.

Mr. Haycraft: It is offered in evidence.

Mr. Albert: This is in four or five times.

Mr. Haycraft: Can you give me the number of it?

Roy H. Bjorkman—For Commission—Direct.

8521

Mr. Feldman: At least once.

(Discussion had off the record.)

Examiner Bennett: Have you offered it? They said it was in evidence already.

Mr. Haycraft: I have offered it. I say I am waiting now to see if we can find the number, and then I will withdraw it. I will withdraw the offer for the time being, if I will be allowed to refer to it.

Mr. Albert: Yes, certainly.

(Thereupon a paper was marked Commission's Exhibit 597 for Identification.)

8522

By Mr. Haycraft.

Q. Now, I hand you Commission's Exhibit No. 597 for Identification, and ask you if you can identify that one?

A. Yes, sir.

Q. Did you receive it? A. Yes, sir.

Q. From whom? A. Mr. Golby, December 24th, 1932.

Q. Calling your attention to Commission's Exhibit 592, I will ask you if this was the letter you referred to in your letter of December 28th to Mr. Golby? A. Yes, that is it.

Q. I show you Commission's Exhibit No. 596-A to C for Identification, and ask you if that is the letter referred to in Commission's Exhibit No. 597, the first paragraph?

A. Yes.

8523

Mr. Haycraft: I offer Commission's Exhibit No. 597 in evidence.

(The paper referred to, heretofore marked for identification Commission's Exhibit 597, was received in evidence.)

Mr. Albert: I renew my objection.

Examiner Bennett: Overruled; received.

8524

*Roy H. Bjorkman—For Commission—Direct.**By Mr. Haycraft.*

Q. I now call your attention to Commission's Exhibit No. 595, and ask you whether or not you recall receiving from the Guild, from Mr. Golby, copies of the minutes of their retail Guilds?

Mr. Albert: Objected to as immaterial, if the Court please.

Examiner Bennett: Overruled; you may answer.

The Witness: Yes, sir.

(Thereupon a paper was marked Commission's Exhibits 598-A to H for Identification.)

8525

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 598-A to H, and ask you if you received this from Mr. Golby? A. Yes, sir.

Mr. Haycraft: Offered in evidence.

Commission's Exhibit No. 598-A is an original letter from Mr. Golby dated January 7th, 1933, addressed to Mr. Bjorkman.

I haven't heard whether there is any objection to it or not.

Examiner Bennett: Received. Are you making an objection to Exhibit No. 598?

Mr. Albert: Oh, yes.

Examiner Bennett: All right, sir. We will take up the objection, first.

Mr. Albert: Respondent F.O.G.A. objects to Commission's Exhibit No. 598-A—I withdraw that.

Respondent objects to Commission's Exhibit No. 598-B through to H, on the ground that the minutes refer to matters which are not binding in any manner whatsoever upon the F.O.G.A., contains

8526

minutes of certain hearings of an organization upon whom at the present time we do not believe any hearings are going to be held, and refers to matters that have long since antedated the complaint, with respect to which the Federal Trade Commission is investigating; refers to matters of procedure that have long since been superseded by other matters and procedure since the taking of these minutes, and contain matter which, if gotten in this manner through this witness, is impossible for the Fashion Originators Guild to cross-examine upon them.

Now, if the Commission wishes to show that the Minneapolis Guild in drafting its program sought assistance by using the programs of other Guilds as models, I think that a simple statement of that kind is sufficient without putting into the record the minutes of the uptown retail Guild, which are in no manner or means binding upon the Fashion Originators Guild, and as to which we cannot examine this witness who knows nothing about them.

8528

In addition, if it please the Court, I wish to specifically point out that the uptown retail Guild is not a named respondent in this proceeding, so that the context and substance of what occurred at its particular meetings has no relevancy or bearing whatsoever upon this proceeding. I have not objected to Commission's Exhibit No. 598-A by reason of the fact that I state that I can see no relevancy to the fact that the Commission wants to bring out the point that the Minneapolis Guild sought assistance in formulating its program by attempting to be guided by the programs of others, but if the Commission permits such testimony to go into evidence, I don't think it will be of very great importance.

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8530

Roy H. Bjorkman—For Commission—Direct.

However, to permit these minutes to go in, I believe it is very vital as against the Fashion Originators Guild, since it is impossible for us to cross-examine upon it, and certainly by reason of the fact that these matters have all been superseded since that time and they long antedate the period about which the Federal Trade Commission complains.

Examiner Bennett: Overruled. Received.

Mr. Albert: Exception.

(The papers referred to, herefore marked for identification Commission's Exhibits 598-A to H, were received in evidence.)

8531

By Mr. Haycraft.

Q. Now, Mr. Bjorkman, do you recall now who attended your meeting held in January, 1933? A. You mean January or December?

Q. December, 1933? A. Yes, I can. You mean the stores or individuals?

Q. Stores or individuals, either one. A. Yes. There was Young and Quinlan, Raleigh's Jackson-Graves, Thomas, Atkinson, Dayton's Powers, Bjorkman's, Mary Jones, Donaldson.

Q. The representatives of those various organizations were the merchandise managers? Were they buyers or what? A. Heads of the store and the merchandising men.

8532

They were all executives:

Q. Now, at that meeting what took place with reference to the formation—with respect to the co-operation with the Fashion Originators Guild of America, if you recall?

Mr. Maslon: Just a moment. I object as calling for a conclusion of this witness.

Examiner Bennett: You were present at these meetings?

The Witness: Yes.

Roy H. Bjorkman—For Commission—Direct.

8533

Examiner Bennett: All right. What took place?

Mr. Albert: May I ask whether there were any minutes taken of that meeting?

The Witness: No, no.

Mr. Haycraft.

Q. You may answer. A. Well, we organized, or we met for lunch and discussed the possibilities and the feasibility of this organization—of this organization's aspirations in New York, and also for the possible improvement of our own retail conditions here on Nicolette Avenue.

Q. Did you agree to do anything about it? A. Well, there was no action taken at all.

Q. All right. I show you Commission's Exhibit No. 9-A and B; do you recall receiving that letter? A. Yes,

Q. I would like to have you refresh your recollection to the first paragraph of the letter, as to what action was taken at that meeting. A. Well, I will explain why it is—

Q. First answer: I am asking you whether or not this refreshes your recollection? A. Yes, sure.

Q. Of what took place at the meeting? A. Yes, sir.

Q. Having refreshed your recollection, now will you testify as to whether or not there was any agreement or action taken at that first meeting? A. There was no action. That is what I said. There was no action taken and no minutes or anything. We just discussed the possibilities of it.

Q. Was there any agreement as to further procedure?

Mr. Albert: That is objected to, as to whether or not there was any agreement, as calling for a conclusion of the witness.

Examiner Bennett: You may answer.

Mr. Albert: Exception.

8534

8535

8536

Roy H. Bjorkman—For Commission—Direct.

The Witness: May I have that question?
(The question was read.)

The Witness: Well, there were a few of these merchandise men that didn't feel that they could act for the institution, like Mr. Snyder of Powers, who is the merchandise man. So they went home to discuss it with the heads of the institution.

Mr. Albert: Now, if it please the Court, I ask that the answer be stricken as not responsive.

Examiner Bennett: Overruled.

Mr. Albert: The question is, is there an agreement or not. I think the question can be answered "Yes" or "No."

8537

Examiner Bennett: Denied. Go ahead.

The Witness: I have answered.

By Mr. Haycraft.

Q. Was there any agreement or understanding that these individual stores would write letters to the Guild, the Fashion Originators Guild of America, setting forth their ideas?

8538

Mr. Albert: That is objected to as calling for the conclusion of the witness as to whether or not there was an agreement. I think that what the Commission wants is a statement from this witness as to what was said and the Court can deem for itself whether or not that constituted an agreement.

Examiner Bennett: Well, I don't expect the witness to tell in detail what each man at that lunch party had said. If he can tell the substance, he is doing very well.

Mr. Haycraft: You may answer.

Examiner Bennett: I will overrule the objection.

Roy H. Bjorkman—For Commission—Direct.

8539

(The question was read.)

The Witness: I didn't think that there was—
that this letter—rather—

By Mr. Haycraft.

Q. Well, I think you can just stop right there. A. No,

no.

Q. Let me ask you this question: Was there any understanding or agreement that you as chairman of the group would write such a letter to the Guild? A. No.

Q. Was there any plan made for future action by your group? A. Yes. We were going to meet again later to discuss it further.

8540

Q. Did you ask the members that were present at that meeting to submit at a later meeting their reactions to the plan of the Guild? A. You mean the various merchants?

Q. Yes. A. We were going to have another meeting.

Q. What was the idea of the further meeting? A. Well, of course, there were a few of these individuals that couldn't act for the institutions. They didn't have the authority. This is one of them. I think this is the only letter that we received, I believe, out of the twelve or fourteen members that met.

Q. This that you refer to is a letter— A. Mr. Snyder of Powers—

Q. To yourself? A. Yes, sir.

Q. Under what date? A. January 17th, 1933.

8541

Q. Did the Powers Mercantile Company later affiliate itself with the Guild? A. Very much so.

Mr. Albert: Now, if it please the Court, I haven't been able to hear that last question and the answer.

There seems to be a little private colloquy between

Mr. Haycraft and the witness. May I ask that it be repeated?

(The record was read.)

8542

Roy H. Bjorkman—For Commission—Direct.

Mr. Maslon: What Guild are you talking about?

The Witness: Minneapolis Retailers Guild.

Mr. Maslon: I object to that as immaterial, not within the scope of this proceeding, confined to purely intrastate transaction.

Examiner Bennett: What was that statement? (The record was read.)

Examiner Bennett: Overruled.

Mr. Albert: Now, if it please the Court, Commission's Exhibit No. 599-A and B, is a letter from one—

8543

Examiner Bennett: I don't know just the status of that. It seems to have been more or less identified. I don't know that it has been offered.

Mr. Haycraft: Yes, I have offered it, Mr. Examiner.

Examiner Bennett: You have? All right.

8544

Mr. Albert: It is a letter from the Powers Mercantile Company, whoever that may be, to Mr. Bjorkman containing certain ideas and theories of the Powers Mercantile Company in no way binding upon the Fashion Originators Guild, in no way binding upon the Minneapolis Guild, in no way germane to the proceedings here, dated January 17th, 1933; and in addition, if it please the Court, I object to it upon the ground that no proper proof whatsoever has been presented with respect to the letter in question. It is a letter from a fourth party to a third party, the relevancy of which as regards the Fashion Originators Guild has not been brought out.

(The letter referred to was handed to the Examiner.)

Mr. Albert: I think in line with your Honor's previous rulings with respect thereto, it should be excluded. Certainly the Fashion Originators

Roy H. Bjorkman—For Commission—Direct.

8545

Guild is utterly cut off from any cross-examination with respect to this particular letter. Insofar as our ability to probe into it is concerned with respect to the Powers Company, we are cut off.

By Examiner Bennett.

Q. Were you at this time or afterwards co-operating with the Fashion Originators Guild of America? Had you signed the articles of co-operation? A. No.

Q. You never did? A. As an individual? No.

Q. I mean as a firm? A. Yes. Well, no. We all signed.

Q. Do you understand what I am asking? A. We signed as the group, you know. I mean, as an association. 8546

Q. I am asking you individually whether you had signed a document agreeing to co-operate with the Fashion Originators Guild? A. I really don't recall.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 4, Mr. Bjorkman and then see if you can answer the Judge's question?

Examiner Bennett: I wanted to see the status—

Mr. Albert: There is no testimony here whatsoever, your Honor, as to the Powers Company, as to who they are, or what they are, and that letter obviously refers to a period of time even antedating the formation of the Minneapolis Guild. 8547

Mr. Haycraft: I will have to reply to that, Mr. Examiner.

Examiner Bennett: Just a moment, please. I wish you gentlemen would keep your peace until I get through with this man.

Mr. Haycraft: All right, then. I just want to—

8548

Roy. H. Bjorkman—For Commission—Direct.

Examiner Bennett: You have had your objection at great length.

The Witness: We hadn't signed anything that time.

Examiner Bennett: I beg your pardon?

The Witness: I say we hadn't signed anything at that time.

By Examiner Bennett.

Q. But you did later? A. As the group. I don't think—not as an individual firm.

Q. I am asking you as a concern? A. Yes.

8549

Q. You know what I mean; don't you? A. Yes, I understand.

Q. Yes. I see. And you have testified that the other parties to this letter co-operated also? A. Yes, sir.

Examiner Bennett: All right. That is all I wanted to find out.

Mr. Haycraft: All right.

The Witness: Ultimately they became one of the best boosters of the organization.

Examiner Bennett: Yes.

The Witness: That is, the store did.

Mr. Haycraft: I would like to have the witness speak so that I can hear it.

The Witness: Sorry.

8550

Examiner Bennett: I guess he won't correct the Court.

Mr. Haycraft: I am not fearful of that, your Honor.

Examiner Bennett: Overruled. Received.

Mr. Albert: Exception.

(Thereupon the papers referred to, heretofore marked for identification Commission's Exhibits 599~~A~~ and B, were received in evidence.)

Mr. Albert: May I at this time inquire of Mr. Haycraft as to whether or not anybody from the Powers Company or Mr. Snyder are going to be put on the stand whom we can question with respect to the contents of that letter that is now going into evidence through this witness, who doesn't know anything whatsoever about the policies of the Powers Company?

Examiner Bennett: I think it has been identified.

Mr. Haycraft: I don't think it is necessary to argue that, Mr. Examiner. If Mr. Snyder is available I will be more than glad to have him testify.

8552

By Mr. Haycraft.

Q. Is Mr. Snyder here? A. He is available.

Mr. Albert: Unless Mr. Haycraft states that he is going to call Mr. Snyder, I move that be stricken from the record.

Examiner Bennett: Will you let me see the document again?

(The document referred to was handed to the Examiner.)

Examiner Bennett: The letter has been identified. I don't know what you are talking about.

By Mr. Haycraft.

8553

Q. Did you hold another meeting? A. Yes, sir.

Q. And do you have any recollection of when this second meeting was held? A. No, I don't. We held lots of them at various times.

Q. Would you say it was shortly after January 17th, 1934? A. Yes, it was shortly after.

Q. '33? A. Yes. I just mentioned to the Judge that while that letter was sent by Mr. Snyder, Mr. Snyder be-

came one of the biggest acting forces in our local organization, even after that letter, and is one of the officials to-day.

Q. Now, Mr. Bjorkman, did you as—strike that out. I call your attention to this paragraph on page two of Mr. Snyder's letter: "It would be our suggestion that we write the Fashion Originators Guild and tell them that we are in accord in Minneapolis with their efforts to eliminate the abuses of unfair competition, unethical style piracy, and price cutting; and that while we cannot subscribe to the extent of signing their agreement, because of certain things contained there, yet we will strive to eliminate whatever we can of these abuses through our retailers co-operative group, and also farther solicit their co-operation in aiding us in eliminating the sale of certain styles or fashions." Do you recall whether or not any draft of such letter was prepared?

Mr. Albert: That is objected to, if it please the Court.

By Mr. Haycraft.

Q. (Continuing) By yourself or a committee appointed by you?

Mr. Albert: That is objected to, if it please the Court, as wholly immaterial, I don't think the Commission is interested in drafts with respect to something, if it is only a draft and which was never accomplished or carried to fruition in any way. I mean, if this type of testimony keeps up I think we will be in Minneapolis until Christmas.

Examiner Bennett: Overruled. You may answer.

By Mr. Haycraft.

Q. Do you recall? A. No.

Q. Do you recall whether or not you representing the group submitted to the Fashion Originators Guild, Incorporated, a letter embodying the ideas of—a letter or memorandum embodying the ideas of the Minneapolis group? A. Yes, but that was about a year or two after, I believe. You see, this is over a period of about three or four years.

Q. This was in January, 1933? A. Yes, well, but I mean that there was nothing formed or drafted for a couple or three years, I believe.

Mr. Haycraft: Mark this the next exhibit.

8558

(The paper referred to was marked Commission's Exhibit 600 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 600 for Identification and ask you if you can identify that paper? A. Yes, sir.

Q. What is it? A. It is a copy of a declaration of an organization or of a formal organization which was organized in December of 1935, because we had met more or less as a loosely formed body and we hadn't had any rules, regulations, constitution at all, so that is what this is.

8559

Q. Who prepared it? A. Well, there was a committee, Mr. Donovan, Mr. Hyman and Mr. Bjorkman.

Q. Mr. Donovan representing whom? A. The Dayton Company.

Q. Mr. Hyman representing whom? A. B. A. Atkinson.

Q. And you represented your own firm? A. That is right.

8560

Roy H. Bjorkman—For Commission—Direct.

Q. Was this paper discussed at the meeting—At any meeting of your organization? A: Plenty of them.

Q. What, if anything, was done with it other than discussion? A. Well, in fact, this was signed and was sent in to the Fashion Originators Guild. It was accepted unanimously by the group.

Mr. Haycraft: I offer this exhibit in evidence. You mean the original was sent to the Fashion Originators Guild?

The Witness: Yes.

Mr. Albert: May we have the date of Commission's Exhibit No. 600 for Identification?

8561

The Witness: We can give you the exact date. It was in the summer of 1935, around June and July, I think.

Mr. Albert: Now, if it please the Court, I object to Commission's Exhibit No. 600, as having long since charged into the valley of death.

The Witness: Ha, ha.

Mr. Albert: Having been superseded by a subsequent agreement which is in evidence.

Examiner Bennett: What was Mr. Albert's statement?

(The statement referred to was read.)

Mr. Albert: No proper foundation has been laid with respect to Commission's Exhibit No. 600.

8562

Examiner Bennett: I would like to see that document, please.

Mr. Albert: No proper foundation of any kind has been laid with respect to that.

The Witness: We had been functioning as an organization, but we hadn't had—

Examiner Bennett: Overruled. Received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 600, was received in evidence.)

Roy H. Bjorkman—For Commission—Direct.

8563

(Thereupon papers were marked Commission's Exhibits 601-A and B, 602 and 603 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 601-A and B and ask you if you can identify that, in any way? A. Yes, sir.

Q. What is it? A. It is the first attempt of the Minneapolis Fashion Retailers Guild, that is, for a declaration of co-operation in anti-piracy policy, with the Fashion Originators Guild of America, and after considerable discussion, a long time co-operation within ourselves, we organized this and we sent it into the Fashion Originators Guild.

8564

Q. Do you know when that happened? A. Yes. It was in June, I believe, in 1935.

Q. That is, you sent the original of this in? A. Yes, that is right.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: Mr. Bjorkman, is Commission's Exhibit No. 601-A—has that exhibit ever been signed?

Mr. Haycraft: The original.

The Witness: Yes.

Mr. Albert: Or is this merely a draft of something?

8565

The Witness: No.

Mr. Albert: Of something that was proposed?

The Witness: This was signed. This is just an extra copy of it.

By Mr. Haycraft.

Q. (Indicating paper to the witness.)

Mr. Albert: Do you know whether or not this was accepted by the Fashion Originators Guild?

8566

Roy H. Bjorkman—For Commission—Direct.

Mr. Haycraft: That is objected to at this time.

The Witness: It was rejected.

Mr. Albert: Now, if it please the Court—

Mr. Haycraft: Just a moment. Mr. Examiner, I move that the answer be stricken. May my objection be ruled on?

Examiner Bennett: Why—

Mr. Haycraft: I will let the answer stand. I withdraw my objection.

Examiner Bennett: I will let him answer.

Mr. Haycraft: Yes.

The Witness: May I have that question again?

8567

Mr. Haycraft: No, it is all over. There is no question pending.

Mr. Albert: Commission's Exhibit No. 601-A and B, if it please the Court, is objected to upon the ground that it is entirely immaterial and irrelevant by reason of the fact that it is practically solely a draft of something that the Minneapolis Guild wanted to do, and is not binding in any way upon the Fashion Originators Guild and never having been accepted by the Fashion Originators Guild, and no proof of acceptance offered by Mr. Haycraft.

Mr. Haycraft: The fact that it was not accepted is a very important factor in this, so that is one of the reasons I am offering it.

8568

Mr. Albert: If it is an important factor why didn't you bring that out that it wasn't accepted?

Mr. Haycraft: I will let you do that.

Examiner Bennett: Can you fix the time of this document?

The Witness: Yes, sir. June, I think, of 1935, the original is dated.

Mr. Haycraft: I would like at this time to call for the original if the respondent has it.

Roy H. Bjorkman—For Commission—Direct.

8569

Mr. Albert: May I point out to the Court that there is an agreement that has been placed in evidence, which I believe is Commission's Exhibit No. 4?

Mr. Haycraft: Not of this paper.

Mr. Albert: Between the Fashion Originators Guild and the Minneapolis Guild which merges all previous conferences, agreements, or understandings, of any kind, nature and description, and Commission's Exhibit No. 601-A and B, by virtue thereof is entirely immaterial.

Mr. Haycraft: I would like to have the record show that I have requested respondent to produce the original of this paper, 601-A and B.

8570

(A discussion ensued between the witness and Mr. Maslon out of the hearing of the court reporter and the Examiner.)

Mr. Albert: I further object to the introduction of Commission's Exhibit No. 601-A and B, upon the ground that there is insufficient foundation with respect to the fact that the F.O.G.A. ever got that proposed draft which was never accepted; upon the ground that the substance thereof is in no way binding upon the Fashion Originators Guild.

Examiner Bennett: The objection is overruled. It may be received as Commission's Exhibit No. 601-A and B.

Mr. Albert: Exception.

8571

(The paper referred to, heretofore marked for identification Commission's Exhibits 601-A and B, was received in evidence.)

By Mr. Haycraft.

Q. Now, Mr. Bjorkman, do you recall whether or not Mr. Post and Mr. Golby were in Minneapolis at a meeting

8572

Roy H. Bjorkman—For Commission—Direct.

of the Minneapolis Guild on or about May 13th, 1935? A. Yes, sir.

Q. Where was that meeting held? A. Raddison Hotel.

Q. Do you recall who attended? A. Well, I think every ready-to-wear merchant in Twin Cities was there. We invited the St. Paul merchants also. About thirty-five or forty attended.

Q. Who addressed the meeting? A. Well, Mr. Post was introduced. He was introduced, he was quizzed, and answered.

Q. Do you recall what Mr. Post said on that occasion? A. Not in totality. He was there to answer the objections of a few members of the Guild or local merchants here.

8573

Q. What were those objections?

Mr. Albert: That is objected to, if it please the Court, as outside of the scope of the complaint of the Commission, referring to matters not complained of by the Commission and also referring to matters which had the sanction of the law at the time they were discussed or proposed or acted upon.

The Witness: Probably I should change that.

Examiner Bennett: Do you remember what objections he acted on?

The Witness: They were not objections. It was lack of understanding or misinformation. It was more of an educational talk as there were a lot of misunderstandings to be cleared up.

8574

By Mr. Haycraft.

Q. Well, what were the objections or misunderstandings? A. Well, the only objection that was of any size here was of the question of the price ranges that were to be involved.

Q. Involved in what? A. Well, I believe when the Guild first started, they started with a price line \$16.75 and up wholesale and then there was a less expensive group at \$10.75. They were anxious and ambitious to join the group, and then after they were—and then there were some objections by a few merchants over the country, I understand. There were one or two in our group here, I understand that did not know whether they wanted them or not, and Mr. Post, as I recall it, he was here on that subject more than anything else.

Q. What did he say about that? A. Well, I can just speak of it here in general matters. After he left, that was in—

Q. The 13th of May? A. That was in May, last year. We had various meetings after that time.

Q. Let us find out what Mr. Post said at that meeting?

A. He was trying simply to sell the organization on the fact that they did not ask the \$10.75 group to come in. They asked to join the organization, and they were perfectly willing to have them—

Q. We have too many "those," Mr. Bjorkman. A. Yes.

Q. Who did not ask the \$10.75? A. The Fashion Originators Guild did not ask the \$10.75 group in, neither did the retailers, I understand. They wished to join the Fashion Originators Guild.

Q. You mean the \$10.75 manufacturers? A. Yes. There were one or two organizations, I don't know what they call themselves, but the \$10.75 manufacturers wished to join the F.O.G.A. It was perfectly satisfactory with the F.O.G.A. if it was satisfactory with the majority of merchants over the country who had signed cards or were in the various organizations. And then I believe if devolved that even the \$6.75 manufacturers wanted to join the Guild. Well—

Q. Was that discussed at that meeting? Or later? A. No, that was discussed at that meeting.

8578

Roy H. Bjorkman—For Commission—Direct.

Q. All right. A. If I recall. There was a question, I believe, of the possibility and of the advisability of the less expensive groups to be admitted, if they wished to be admitted. However, there was no time, there was no decision reached at all on the less expensive lines.

Q. What did Mr. Post say about that? A. Well, that was all left to the future. I mean, it was perfectly all right, I believe, from the Fashion Originators Guild standpoint if the merchants were agreeable, the majority of the merchants.

8579

Q. Did any of the Minneapolis merchants express themselves during that meeting on that point? A. Yes. One, possibly two, quite emphatically.

Q. What about? A. Well, they did not—oh, no, that is wrong on the \$10.75 there was no exception. It was agreeable down to the \$10 price range, but there were one or two that I believe were interested, or I believe were not in favor they were going to go into the less expensive range.

Q. Do you remember who they were? A. I think the Dayton Company was one and at that time I believe Powers were one.

Q. Do you recall were there many others?

The Witness: Were there others, Dane?

A Voice: I do not recall.

8580

The Witness: You were at that meeting, weren't you? No, I guess you were not. Mr. Larson was there. I recall there were two.

By Mr. Haycraft.

Q. There might have been others that you do not recall?

A. There might have been others, yes.

Q. At that meeting or subsequent to it, was there any thing said by Mr. Post with respect to a new contract or agreement between the Minneapolis Guild and the Fashion Originators Guild?

Roy H. Bjorkman—For Commission—Direct.

8581

Mr. Albert: If it please the Court, there is nothing in evidence as yet as to any agreement or contract between the Minneapolis Fashion Guild and the Fashion Originators Guild.

Mr. Haycraft: We have already got a couple in evidence this morning.

Examiner Bennett: I will overrule the objection.

Mr. Albert: Exception.

The Witness: The Fashion Originators Guild were not pleased with the agreement or with the declaration of anti-piracy in co-operation that we had worded so there was nothing said at that meeting, no, but there was at a subsequent time.

8582

By Mr. Haycraft.

Q. When subsequent, how long afterward? A. Just a few weeks subsequent, I think it was, around June or July.

Q. I show you Commission's Exhibit No. 663— A. Well, you have the material there.

Q. —for Identification, and ask you if that will refresh your recollection as to when it began to be a subject of discussion between you and the Fashion Originators Guild? A. Well, these contracts, as you have them there in your material, they were copies of contracts from the various other Guilds that they had at that time. However, we did not like them, so we composed our own.

8583

Q. You mean Mr. Golby sent you some copies? A. That's right, of the others.

Q. Of Chicago and Baltimore? A. I don't know what they are. They were Chicago and Baltimore, those two, and possibly the New York Uptown Guild.

Q. Now, Mr. Bjorkman, so that there will be no question as far as the record is concerned and particularly for the benefit of counsel for the respondent, I will ask you

8584

Roy H. Bjorkman—For Commission—Direct.

at this time to give us the various steps that were taken with the Minneapolis Guild to enter into an agreement with the F.O.G.A., Fashion Originators Guild of America, Inc., calling attention first to Commission's Exhibit 601-A, and ask you to testify as to the circumstances surrounding the execution of that document and what was done with it and so on.

Examiner Bennett: I will ask him to go ahead and make a full explanation, regardless of what is in the record.

Mr. Haycraft: Just forget what is in the record and make a full explanation.

8585

Mr. Albert: I think it would be the best.

By Mr. Haycraft.

Q. I am directing your attention first to 601-A and B that is the first agreement.

Examiner Bennett: Give us the whole history. You can use the documents.

The Witness: Well, we, naturally, in an organization of this kind, where we have got humans to contend with, some of them are a little more selfish than others.

Examiner Bennett: Well, make it as short as you can.

8586

The Witness: We tried to make up an agreement that that would be satisfactory to the Guild and still would protect our province as retailers and that was why we made a few of these exceptions.

By Mr. Haycraft.

Q. Which one of the documents are you referring to?
A. This first here.

Roy H. Bjorkman—For Commission—Direct.

8587

Examiner Bennett: That appeared in 601?

The Witness: 601-A and B. The exceptions were the price lines. That was really the only exceptions in the agreement that was submitted.

Examiner Bennett: That was submitted to the Guild?

The Witness: That was submitted to the Guild and rejected.

Mr. Albert: At what time, Mr. Bjorkman?

The Witness: Oh, June, or, no, about the first of July, 1935, so then we immediately drew up another. This was rejected, too.

Examiner Bennett: And that is what number? That is illustrating what number?

8588

The Witness: 672-A.

Examiner Bennett: And that was submitted and rejected?

The Witness: No, that was rejected also.

By Mr. Haycraft.

Q. A to D? A. A, B, C, D, that was rejected also.

Examiner Bennett: Then what did you do?

The Witness: Then we did proceed to—

Mr. Haycraft: Let us get the date of this last one. When was that submitted and when was it rejected?

Mr. Feldman: Approximately?

8589

The Witness: This was in July, 1935, and then in late August. This is the 26th day of August, we drew up an agreement which was satisfactory to the F.O.G.A., and this was the agreement.

By Mr. Haycraft.

Q. 695? A. That is right.

Q. Now, between July, when 672 A, B, C, D, was submitted to the Guild, and August 26, 1935, when 695-A to

8590

Roy H. Bjorkman—Fdr Commission—Direct.

E were submitted to the Guild, what was going on with respect to 672-A to D? A. Well, that was accepted temporarily, I believe here, was it not?

Q. That is what the correspondence shows. A. That was my recollection.

Examiner Bennett: Just testify.

The Witness: That was accepted, but with reservations and exceptions.

By Examiner Bennett.

Q. And that is the whole story as you know it? A. Yes.

8591

Q: I want you to answer one question. Was this first document drawn, that is, I am referring to 671-A and B, was this the first document drawn relating to co-operation with the Guild? A. Yes, sir.

Q. Co-operation by the Minneapolis— A. Yes, sir.

Q. And when was it first drawn? A. May; late in May or June, 1935.

Q. And during all the time from 1932 to that time when you were in constant communication with the Guild, according to the record here, you had no formal agreement? A. No.

Examiner Bennett: I see; all right.

Mr. Haycraft: That concludes the direct examination of Mr. Bjorkman.

8592

Examiner Bennett: Do you want to go ahead with cross-examination?

Mr. Albert: No further questions, Mr. Haycraft?

Mr. Haycraft: No.

Mr. Albert: Is the Commission going to put in letters of that kind without attempting to explain them in any way? Your Honor, we have over an hundred and possibly 200, willy-nilly.

Examiner Bennett: The Commission has stated it has rested with this witness and it is the end of

Roy H. Bjorkman—For Commission—Direct.

8593.

its examination. You can go ahead and cross-examine.

Mr. Haycraft: It is the contention, Mr. Examiner, that the documentary evidence that has gone in—

Examiner Bennett: You can do as you think best, but there is no need for filling the record up with a lecture.

Mr. Haycraft: I simply wish to say, Mr. Examiner, it is the contention of counsel for the Commission that the documents that have gone into evidence speak for themselves and all explanations necessary to their contents that are necessary have been made.

8594

Examiner Bennett: It is not necessary to go into any controversy here. Let each one handle his own side of the case and if he does not handle it right, it is too bad for him.

Mr. Albert: May I ask, in the light of the fact it is 4.29, that we adjourn?

Examiner Bennett: That is perfectly all right. You may adjourn until to-morrow at 10 o'clock.

(Whereupon, at 4.30 o'clock P. M., August 31st, 1936, an adjournment was taken until 10 o'clock A. M., September 1st, 1936.)

8595

Roy H. Bjorkman—For Commission—Direct.

Room 307, Federal Building,
Minneapolis, Minnesota,
September 1st, 1936.

Met, pursuant to adjournment, 10 o'clock, A. M., C.S.T.

Before: JOHN W. BENNETT, Examiner.

(Same Appearance.)

PROCEEDINGS.

Examiner Bennett: Be in order, gentlemen, please. This is a reconvening of the hearing from Monday, August 31st, 1936.

ROY H. BJORKMAN thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

Mr. Haycraft: Before Mr. Bjorkman is examined, I should like to have him identify some exhibits that are already in the record, put in in New York City. It won't take but about five minutes.

Mr. Albert: Well, now, if it please the Court, we have here a record of some 300 pages without the exhibits, 200 pages of which are questions by Mr. Haycraft. "Did you receive this?" "Did you mail this?" and questions of that kind.

Now, I object to our having to pay or being by force of circumstances forced to pay for a record which we understood from Mr. Haycraft's opening statement here has been gone into in New York. I do not see any necessity of piling up the costs of this proceeding in question. They have gone thus far. If they are in in New York, they are in.

Mr. Haycraft: Of course, some exhibits were identified by Mr. Post in New York City as having been sent or received by him:

Examiner Bennett: Is there any further necessity for identification? If they were received before, they were received.

Mr. Haycraft: Some of them were sent by him and I want to show that this witness received them.

Mr. Keller: He admitted sending them.

Examiner Bennett: Did Mr. Post say he sent them?

Mr. Haycraft: Yes. Very well, I simply wanted to make sure. I do not want to be met with the objection later on, or the contention later on that these exhibits were not received.

8600

Examiner Bennett: I think they are sufficiently offered in evidence.

Mr. Haycraft: Very well.

Mr. Albert: Now, if it please the Court, owing to the difficulties which the stenographic staff met in trying to keep up with all of these exhibits, that went in yesterday, the respondent was not furnished as customary with a copy of the record containing copies of these exhibits and it was impossible to see them last night, and I ask the indulgence of the Court for a few moments while I compare three or four exhibits now that we could not get last night, which are of vital importance.

8601

Examiner Bennett: Very well, a short recess.

(Thereupon a short recess was taken.)

Mr. Albert: We are ready to proceed up to a point.

Examiner Bennett: You may proceed.

8602

*Roy H. Bjorkman—For Commission—Cross.**Cross-examination by Mr. Albert.*

Q. I show you Commission's Exhibit No. 601-A, and ask you when that was sent to the Fashion Originators Guild?

A. You asked if it was sent?

Q. When it was sent? A. I cannot recall exactly. We did not keep—

Q. Approximately? A. Approximately, I think it was in May, 1935, just a year ago.

8603

Q. Now, was that first declaration of co-operation or agreement, whichever word you wish to use, that the Minneapolis merchants sent to the Fashion Originators Guild? A. It is my recollection it was.

Q. Now, I show you a letter dated February 1st, 1923, on the stationery of Roy H. Bjorkman, and ask you if that refreshes your recollection as to which was the first declaration that was sent? A. Yes, sir, I recall this now.

Examiner Bennett: That is in the record?

Mr. Albert: Yes.

Mr. Haycraft: What is the number of the exhibit?

Mr. Albert: 602.

By Mr. Albert.

8604

Q. So that, Mr. Bjorkman, when, in response to the gentle leading of Mr. Haycraft, you stated that Commission's Exhibit No. 601-A was the first agreement that had been sent, you overlooked Commission's Exhibit No. 602?

Mr. Haycraft: Don't answer that question. Ask that it be stricken as not in conformance with the record. There was no leading by Mr. Haycraft, gentle or otherwise.

By Mr. Albert.

Q. Now, Mr. Bjorkman, you have testified that Commission's Exhibit No. 601-A and B was a draft of the proposed

agreement which had not been accepted by the Fashion Originators Guild, is that so? A. Yes.

Q. And you also testified that Commission's Exhibit No. 672-A to whatever it is, was also sent to the Fashion Originators Guild and was temporarily accepted by the Guild pending the redrafting of that agreement, is that not so? A. Yes, sir.

(Thereupon papers were marked Respondents' Exhibits 58-A to D for Identification.)

Examiner Bennett: The next Respondents' number is what?

The Reporter: 58-A to D.

8606

By Mr. Albert.

Q. I show you Respondents' Exhibit No. 58-A, 58-B, 58-C and 58-D and ask you if this refreshes your recollection as to the chronological order of the instruments that were prepared. Please answer "Yes" or "No"? A. May I have that question again? You say "chronological order." Do you mean this was—what number this was?

Q. No. Yes, with relation to the others? A. All right.

Q. Will you just answer "Yes" or "No," please? A. How can I answer "Yes" or "No" when you ask for chronological order?

Q. No, no. I say, does it refresh your recollection as to the chronological order? A. Yes, yes.

Q. Now, isn't it so that Commission's Exhibit 601-A was first prepared, that thereafter Respondents' Exhibit No. 58-A to D. was prepared and temporarily accepted? A. That is right.

Q. That thereafter Commission's Exhibit No. 672-A was prepared and completely rejected? A. That is right.

Q. And thereafter Commission's Exhibit No. 695 was finally agreed upon between the parties? A. That is right.

Q. So that—

8607

8608 *Roy H. Bjorkman—For Commission—Cross—Redirect.*

Examiner Bennett: It was finally rejected?

Mr. Albert: Yes.

Examiner Bennett: In the meantime, while 672
was being submitted and considered——

Mr. Albert: Yes. If your Honor will read this.
It is purely a style piracy co-operation.

Examiner Bennett: Yes, I see.

Mr. Albert: And 635 which is the agreement
that was finally signed?

Examiner Bennett: Yes.

Mr. Albert: Is perhaps more inclusive with respect
to the agreement between the parties.

8609

Examiner Bennett: I see, but this remained in
force until its rejection.

Mr. Albert: Temporarily. In answer to your
Honor's question, a further explanation of Respondents'
Exhibit No. 58 was——

Mr. Haycraft: Just a minute. I object to referring
to that unless it is in evidence. I want to know something
about it.

Mr. Albert: I offer in evidence Respondents'
Exhibit No. 58-A and 58-B, C and D.

Mr. Haycraft: Would you mind handing it to
me?

Mr. Albert: No. I am sorry.

(The paper writings referred were handed to Mr.
Haycraft.)

8610

Mr. Haycraft: I would like to ask the witness
a question.

Examiner Bennett: All right. As a basis for
an objection?

Mr. Haycraft: Yes.

Redirect examination by Mr. Haycraft.

Q. Is it your testimony that Respondents' Exhibit No.

Mr. Haycraft: By the way, Mr. Examiner, I think we ought to have separate exhibit numbers on these. I see they have got "A, B, C, on three different documents.

Mr. Albert: They all refer to the same documents, your Honor.

Mr. Haycraft: I know, but they are all three different documents. They ought to be 58, 59 and 60. Two of the documents are letters and one document is an agreement.

Examiner Bennett: Yes, we will fix that. I think we will have them separately numbered.

(The paper writings heretofore marked as Respondents' Exhibits 58-A, B, C and D and received in evidence were renumbered as Respondents' Exhibits 58, 59 and 60-A and 60-B.) 8612

By Mr. Haycraft.

Q. Is it your testimony that Respondents' Exhibit No. 60-A and B was signed by members of the Minneapolis Guild and submitted to the Fashion Originators Guild prior to the submitting of Commission's Exhibit No. 672-A, B, C and D? A. No, sir, no.

Q. What is your testimony in that respect? A. I was confused yesterday, Mr. Haycraft, because I forgot the first agreement we signed, which was—I have refreshed my memory this morning. February 1st, 1933, which was really a declaration of co-operation. I mean, there was no agreement, you see? So that would be the first (indicating). 8613

Q. 601-A? A. The second rejected. This proposed. This is third (indicating).

Q. 672-A to C? A. That is right.

Q. Rejected? A. Rejected.

Q. All right. A. And this was accepted temporarily.

8614 *Roy H. Bjorkman—For Commission—Redirect—Recross.*

Q. 60-A and B? A. Yes, sir.

Mr. Haycraft: Then with that explanation of the witness I have no objection.

Examiner Bennett: Received.

Mr. Albert: If your Honor please, just a moment. Mr. Haycraft has again succeeded in disturbing the order or changing the order of these documents.

Mr. Haycraft. May I show you something off the record here?

Mr. Albert: Yes.

(Thereupon a discussion was had off the record.)

8615

Examiner Bennett: We will resume therefore, then.

Recross-examination by Mr. Albert.

Q. Now, Mr. Bjorkman, regardless of the chronological order of Commission's Exhibits 601, 672 and Respondents' Exhibit No. 59 and Respondents' Exhibits 60-A and B, is the agreement or declaration which was temporarily accepted pending the drafting of Commission's Exhibit No. 695? A. I really can't be sure of either of those two, Mr. Albert. Just as I have said here, there has been such a mass of confusion here that I think from the correspondence here in the letter that it was. I mean, that this letter here, which I sent here, because I do recall that Mr. Gerner was out of the city and this was sent down with Abe Shapiro. Then I believe that was one that was temporarily accepted due to the fact that they had wired us that we couldn't see the lines and all of that unless this was in, so we did rush the thing through. That was the reason, I believe, that Mr. Hyman and his committee did draw this up in the short manner here so we were able to buy goods.

8616

Q. In order that there would be on record some declaration of co-operation by the Minneapolis Guild, pending a final agreement?

Mr. Haycraft: I object to that question as not being a summary of the witness' testimony.

Mr. Albert: I am asking him the question, your Honor, I am not summarizing.

Mr. Haycraft: I object to the form of the question. No foundation has been laid for it. He can't speak for the Guild.

Examiner Bennett: I will let him answer, if he can.

The Witness: May I have the question?

(Question was read.)

The Witness: Of course, it seems to me that letter of this here showed our spirit of co-operation. We tried to get together with them. To my best knowledge at the present time that is the record now that was temporarily accepted.

8618

Mr. Albert: Indicating Respondents' Exhibit No. 60. May we go off the record for a moment?

Examiner Bennett: Yes.

(Thereupon a discussion was had off the record.)

Mr. Albert: You have no objection to photostatic copies of this going into evidence and being handed back the originals?

Mr. Haycraft: No.

By Mr. Albert.

Q. Mr. Bjorkman, perhaps it might help us if you can tell us who drafted these documents; do you know? A. Well, there were various—there were various committees. The first committee in this Exhibit No. 601-A was Mr. Dayn Donovan, Mr. Hyman and myself. Now, wait a minute. Just excuse me. Will you please strike that from the record? The first committee was Mr. Larson and Mr. Perry Snyder and myself, that drafted the short—
or this 601-A.

8619

8620

Roy H. Bjorkman—For Commission—Recross.

Q. You mean by that that you dictated it? A. Oh, no.

Q. Who dictated it? A. Well, that was all worked out together in the committee meetings between Mr. Larson, Mr. Snyder and I.

Q. Yes. The substance of it? A. Mr. Larson's office. It was all brought at that time. In fact, I think that Mr. Larson dictated it to his secretary and then it was approved by the meeting of the Guild.

Q. What about 672-A? A. 672-A, to my recollection, was drafted by a committee of Mr. Donovan, Mr. Hyman—now, wait a minute. That is wrong. By Mr. Snyder, Mr. Donovan, Mr. Hyman and myself.

8621

Q. That is in regards to substance? A. Yes.

Q. Do you remember who it was that actually prepared and dictated it? A. I think Mr. Hyman.

Q. Dictated it? A. I am not certain, but I believe so.

Q. Who was the committee on Commission's Exhibit No. 695, which is the final draft? A. Well, I think this was accepted. This is your regulation form of contract here, this one.

Q. You just copied that off from the form of contract; is that it? A. I think so, yes.

8622

Q. All right. Now, Mr. Bjorkman, I show you Commission's Exhibit No. 602. I call your attention to the following language: "The following members of the Minneapolis Ready-to-Wear Retailers' Association are sure that they are in sympathy with the manufacturers' difficulties and problems especially pertaining to the piracy of designs. Would you mind explaining what those difficulties and problems were at that time? A. Well, I think I can explain that most simply. It is expensive for a manufacturer that makes a line or collection of dresses retailing, we will say, from \$55 to \$200; that pays considerable money sending a staff of designers to Europe, purchasing expensive materials, trimmings and so on. After they are designed, they will then be copied for one-half

one-third, or one-quarter of the price, and be absolutely reproduced as far as detail is concerned and the color or scheme. That was really, I think, their main idea.

Q. When you say that they were being reproduced or copied, what do you mean by that? A. Just that. You have a very nice suit on this morning, Mr. Albert. In fact, we can take the same thing over here to a tailor and probably have it reproduced as far as the coloring, the style and design, but it wouldn't have the workmanship of that, the fabric. To all intents and purposes it will be the same suit until it was worn a little while.

Q. What is it that you were referring to in that letter by using the general term "style piracy"? A. Just that. The stealing of ideas.

8624

Q. Do you mean that these manufacturers had original ideas in the design of their dresses? A. Originally in this respect? In my philosophy there is nothing original.

Q. Yes. A. I mean, that we take an idea here, take an idea there, and we take our own creative ability and we put our own personality into it, and that is ours. But, however, the same ideas have been elsewhere through the pages of history. These manufacturers go to Europe and they will buy models. They will get an idea from a color. They get an idea from a cuff, a belt, or a skirt, or a color, a trimming. And that will be incorporated into their own ingenuity, and a new gown is born; and while it is his own personality and idea, there are a lot of other fellow's ideas involved in it. But to all intents and purposes it is that man's creation because it is different until some other man sees it and then he will say, "I will build the same thing exactly only that I will make it cheaper."

8625

Q. Do you mean that the creative genius, if you will, of the designers of these better manufacturers evolve creations which are a combination perhaps of old ideas, but which in the combination are entirely new?

8626

Roy H. Bjorkman—For Commission—Recross.

Mr. Haycraft: Objected to. I object to the use of the language "creative ideas."

Mr. Albert: That is a fine objection, if it please the Court.

Examiner Bennett: Read the question, please. (The question was read.)

Mr. Haycraft: I also object to it as not being within the issues of the case.

Mr. Albert: If it is not within the issues of the case I ask that all of the letters that have been put in through this witness be stricken from the record, and we won't have anything to ask this witness about.

8627

Mr. Haycraft: I have no objection, Mr. Examiner, to this witness testifying as to his understanding of the terms as they were used in these exhibits, but I object to going farther than that and getting this witness to testify as to what the manufacturers themselves may do, and so on.

8628

Mr. Albert: Now, if it please the Court, this witness has been tendered an exhibit, and letters upon letters have been tendered as to official pronouncements and the official opinions and the official actions of the Minneapolis Retail Guild, and as a result of the whole thing, the foundation has been laid by Mr. Haycraft in putting in these letters. I certainly believe that I can go at least so far as to show the background of what Mr. Haycraft was referring to in putting these letters in evidence.

By Examiner Bennett.

Q. Mr. Bjorkman, have you ever manufactured dresses?

A. Yes. We have a dressmaking shop; we have a tailor shop; and we have a fur shop.

Q. Yes. A. But not in the manufacturing end. I mean, it isn't—it is a retail establishment.

Q. Have you ever made what you call original designs?

A. Well, they have been—we will say that they have been different.

Q. What? A. We will say that they have been different.

Q. What do you mean by that? A. Well, here is a dress. You like the top of it, we will say, and you like the skirt of another; you like the fabric of another gown.

Q. Yes. A. You like the color of another gown.

Q. Have you ever been in the business commercially as a manufacturer? A. No. No.

Q. Making— A. No.

Q. —dresses? A. No.

Q. In large quantities? A. No.

Q. And studying them in volume? A. No. I haven't.

8630

Examiner Bennett: I don't believe that this witness is qualified to discuss the manufacturers' problems. He can discuss the retailers' problems to a fair-the-well, and I will hear him on consumers' problems, but I think that you have very much better sources of evidence as to manufacturers' problems, and I wish that you would get that information from the manufacturers, not from retailers. I will therefore sustain the objection, if that question is just as I remember it. You might read the question.

8631

(The question was read.)

Examiner Bennett: Yes. Well, I think I will sustain an objection to going into that from a manufacturers' standpoint. I am perfectly willing to let him go into it from a retail standpoint.

8632

*Roy H. Bjorkman—For Commission—Recross.**By Mr. Albert.*

Q. Now, Mr. Bjorkman, at the time in question, was style piracy a problem that necessitated action by retailers? A. Yes, sir.

Mr. Haycraft: Just a moment. I object to that question as not being proper cross-examination, because the exhibit refers to manufacturers' problems.

Examiner Bennett: Well, I will let him go into that. I think if we can get any light on that, it is all right.

8633

Mr. Albert: Thank you, your Honor.

By Mr. Albert.

Q. What was that problem, Mr. Bjorkman? A. Well, too—it is my opinion that the entire field of womanhood was losing all confidence in the ladies' ready-to-wear business.

8634

Q. Would you mind elaborating on that? A. Well, a design would be brought over from Europe that was an exact original design by some French couturiere, and it would be purchased in every price line from \$6.75 up to, well, we will say Hattie Carnegie, so that same design and color as the original would be shown all the way from \$10 retail to \$195 retail; and so, frankly, women were commencing to lose confidence in the business. People she will run into—she would buy a dress for \$100, and she will see it is \$75, \$60, \$25, \$10 and down. And to me it was the end of the industry from a profitable standpoint both from the retail and the wholesale standpoint.

Q. Specifically, Mr. Bjorkman, from your experience, what was the actual result in a store of its having on hand an original design or a new interpretation of the fashion selling at let us say \$50 and a copy of that interpretation being sold by a competitor for \$15 or less.

Mr. Haycraft: Just a moment. I object to that question, Mr. Examiner. It is not a proper question.

Examiner Bennett: I will overrule the objection.

Mr. Haycraft: Irrelevant.

The Witness: Well, it means nothing but losses and mark-downs, that is all.

By Mr. Albert.

Q. That is, you couldn't keep on selling your dress for that price; could you? A. That is right.

Q. And you had to bring down the price of your dress with resultant losses; isn't that right? A. Yes, that is right. 8636

Q. And as a matter of fact that practice precluded you from reordering that dress; isn't that so? A. That is right.

Q. So that you lost the sale value of the dress in being unable to reorder it, and the manufacturer lost the value of his creation in being unable to sell you any further dresses at that price; isn't that so? A. That is right.

Q. Now, with the customer angle, Mr. Bjorkman, what was the reaction of your customers? Can you give us more specifically than the mere fact that womanhood was losing faith in American dressmakers?

Mr. Haycraft: The same objection. It has nothing to do with the issues in this case and it is not proper cross-examination. 8637

Examiner Bennett: Go ahead.

The Witness: Well, are you a married man?

Mr. Albert: I am sorry, I am not. My worry is in combating Mr. Haycraft.

The Witness: Ha, ha. Any man that is a married man, that has had a wife gone out and buy a gown, I don't care whether it has been \$10 or a

8638

Roy H. Bjorkman—For Commission—Recross.

hundred dollars, when she comes home and she has seen it over across the street for less, or she is going out to a party and she has run on to three or four of them, I think he will know just exactly how women feel in that regard. Every woman would love to feel that she is an individual personality and she doesn't care to see anybody else in a gown like she has. I mean, fundamentally—

By Mr. Albert.

8639

Q. You refer to style? A. Style and individuality. It must be different. Now, with a man it is different. We all look more alike as far as our suits and clothes are concerned, but when a woman goes out to a party here, if you want to ruin her day for her, you just want to have two or three in the same party in the identical dress.

Q. Have you any knowledge specifically as to the relations of a woman when she has purchased, let us say, an original design from your store and then sees a copy of it at a lower price in another store? A. Well, it means that if she has already purchased the gown, most of the time we have to refund the difference, or we have to refund the whole thing. That has happened many, many times.

Q. Many, many times? A. Many times, yes.

8640

Q. Now, Mr. Bjorkman, I notice here the signatures of a number of concerns of Minneapolis. I am referring to Commission's Exhibit No. 602. Were representatives of all of these firms at a meeting prior to signing Commission's Exhibit No. 602? A. That is right.

Q. Who was there from B. A. Atkinson, do you recall? A. I believe it was Mr. Hyman.

Q. May I presume that you were there on behalf of A. Mr. Hyman and Mr. Weingarten, I believe, were both there.

Q. Were you there on behalf of Bjorkman? A. That is right.

Q. Who was there on behalf of the Dayton Company?

A. Mr. Larson and Mr. Donovan, I believe.

Q. Who was there on behalf of Donaldson Company?

A. I am sorry. I can't recall.

Q. Do you recall who was there on behalf of Powers?

A. Mr. Snyder.

Q. Mr. Snyder. So everybody had a representative there? A. Yes, sir.

Q. And the matter was completely thrashed out; was it? A. Yes.

Q. And was the consensus of opinion, or did everybody unanimously agree that style piracy was an evil and that they would like to do something to eliminate it? A. Yes.

8642

Mr. Haycraft: Object.

Examiner Bennett: I will sustain an objection to that.

By Mr. Albert.

Q. Was there any dissent of any kind of the signing of Commission's Exhibit No. 602? A. Not of the phraseology involved therein.

Q. I show you Commission's Exhibit No. 653-A and B and ask you whether or not the signatories to that letter agreed to this paragraph in the letter: "We shall be very happy indeed to co-operate with the efforts of the Fashion Originators Guild in every way to further the elimination of evils of the entire industry and to raise the industry to a much higher level of ethics with a decided improvement in profits."

8643

Mr. Haycraft: That is objected to. The exhibit speaks for itself.

Examiner Bennett: What?

The Witness: What is the question?

8644

*Roy H. Bjorkman—For Commission—Recross.**By Mr. Albert.*

Q. Whether or not everybody agreed to that statement?

A. Yes.

Mr. Haycraft: Just a moment. I have an objection pending. All the signatures are attached to it. I assume that they agreed to it, why go into it?

Examiner Bennett: The signatures of the people who signed it are indicated there, aren't they?

Mr. Albert: Yes, sir.

Examiner Bennett: The document speaks for itself.

8645

Mr. Albert: It is merely this, your Honor. The exhibit was signed by Mr. Bjorkman. There was merely an attached statement as to who was present at the meeting.

Mr. Haycraft: He testified. He explained the matter fully.

Examiner Bennett: I don't see that we are getting anywhere by questioning whether those people were sincere in putting their signatures on the paper. Unless you have something else in mind—

By Mr. Albert.

8646

Q. Was the consensus or the unanimous opinion of those present, Mr. Bjorkman, that copying of interpretations of original designs was an unethical practice in the industry?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will sustain the objection.

Mr. Albert: I don't get your Honor's ruling.

Examiner Bennett: I will sustain the objection. I think you are asking him too much. I don't know how any man could conscientiously answer that kind of a question.

By Mr. Albert:

Q. Annexed to Commission's Exhibit No. 653-A and B, Mr. Bjorkman, is Commission's Exhibit No. 653-C, in which you list certain retailers in Minneapolis as being present at the meeting. Did any of them, do you know or can recall, dissent from the proposition that the copying of styles was an unethical practice in the industry?

Mr. Haycraft: That is objected to as irrelevant, immaterial. The document speaks for itself.

Examiner Bennett: I will sustain the objection to that.

Mr. Albert: Exception.

By Mr. Albert:

Q. Mr. Bjorkman, I believe you testified that a certain questionnaire had been sent out by the Fashion Originators Guild in respect to the price lines to be included in the Guild program? A. Yes, sir.

Q. Did you receive such a questionnaire? A. We received a questionnaire which was—

Q. I believe you have it in your file; have you not? A. Yes, we have.

Q. May I ask you to produce it, please? A. I don't know whether I took it back yesterday or whether it was here this morning or not.

Q. I show you Commission's Exhibit No. 623-A and B for Identification and ask you if that is the questionnaire that is referred to? A. Yes, sir.

Mr. Albert: I offer that in evidence.

Mr. Haycraft: I object to it as irrelevant and immaterial, no probative value in this case.

Examiner Bennett: Let's see what it is.

Mr. Haycraft: The witness has testified on direct examination that this was something that he

8650

Roy H. Bjorkman—For Commission—Recross.

made up himself, something which was not sent to the respondent. It has no bearing on the issues in the case.

Examiner Bennett: Just what was done with it?

The Witness: Pardon?

Examiner Bennett: Just what was done with this paper?

The Witness: That was sent out to all the retailers.

Examiner Bennett: By whom?

The Witness: By the Fashion Originators Guild.

8651

Examiner Bennett: That is of America?

The Witness: Yes.

Examiner Bennett: Sent out to you?

The Witness: Yes, personally and they were after it for the feelings we had in regard to those questions in point. We underlined them but we just neglected to send it in. That was all.

Examiner Bennett: You never did respond to it?

The Witness: No; we filled it out, but we didn't send it in. Those were our personal papers.

Examiner Bennett: What is your purpose in offering it. It doesn't contradict anything that is in the record.

8652

Mr. Albert: It is an endeavor to show—

Examiner Bennett: It isn't binding even on this body of people who for some reason didn't send it in. Is it your object to get that matter in the record as binding or showing the sentiment of those people? I think that it doesn't do it.

Mr. Albert: If it please the Court, this particular questionnaire was sent out to all retailers. I believe it was also the subject of a conference which

was addressed by Mr. Post and the subject matter of this was taken up at that meeting.

Mr. Haycraft: Oh, no. I object. There is no foundation for that statement.

Mr. Albert: I said, "I believe."

Mr. Haycraft: I know. I object to that.

Examiner Bennett: Yes. Well, I will sustain an objection at this stage of the game. I don't think it is qualified.

By Mr. Albert.

Q. Do you know whether or not, Mr. Bjorkman, the Minneapolis Guild as such sent it in signed? A. We did not.

8654

Q. The questionnaire? A. We did not.

Q. Do you recall, Mr. Bjorkman, whether or not at the first meeting that was addressed by Mr. Post, at which Mr. Golby, I think, was present, these questions were not read by Mr. Post? A. They were.

Q. They were read? A. Yes.

Q. Do you recall whether or not a discussion was had with respect to them? A. Beg your pardon?

Q. Do you recall whether or not a discussion was had with respect to them?

Mr. Haycraft: I object to any further examination. It is not a proper examination. This exhibit that he is talking about is not the—

8655

Mr. Albert: He has testified to it, if it please your Honor.

Mr. Haycraft: I know, but that doesn't make any difference. That doesn't lay a foundation for this line of inquiry.

Examiner Bennett: Go ahead, you may answer.

The Witness: This was laying a foundation for this first agreement here on price lines. That was

8656

*Roy H. Bjorkman—For Commission—Recross.
Charles J. Larson—For Commission—Direct.*

the main reason for Mr. Post being here. And these were the questions we as a group decided we didn't care to answer those questions as a group, but we have shown our sentiments in this agreement here, which is as far as the price lines are concerned.

Mr. Haycraft: By agreement, you mean Commission's Exhibit No. 601, 672?

The Witness: Well, the first was 601-A.

Mr. Haycraft: And 672?

Mr. Feldman: It was that proposed agreement.

8657

The Witness: Yes, that is right.

CHARLES J. LARSON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name?

The Witness: Charles J. Larson.

Examiner Bennett: Thank you.

The Witness: L-a-r-s-o-n.

Direct examination by Mr. Haycraft.

Q. You have stated your full name, Mr. Larson? A. Yes.

Q. Where do you live? A. At 4831 Penn Avenue, south.

Q. Minneapolis? A. Minneapolis.

Q. What is your occupation? A. Retail merchant—merchandising.

Q. With what firm are you associated? A. With the Dayton Company.

Q. Do you occupy an official position with the Dayton Company? A. Yes, sir; I am the general merchandise manager.

Charles J. Larson—For Commission—Direct.

8659

Q. Are you also a director? A. Yes, sir.

Q. As general merchandise manager what are your duties? A. Well, I am responsible for all of the merchandise activities in our business. I supervise the work of the divisional merchandise managers, who report directly to me.

Q. And under you do you have a divisional merchandise manager over at the ladies' ready-to-wear department?

A. Yes, we have one for the upstairs division, and one for the basement division.

Q. Who are they? A. Mr. Dayne Donovan is a divisional manager in the upstairs-store.

Mr. Albert: Sorry, I didn't get that name.

8660

The Witness: Dayne Donovan, D-a-y-n. And Mr. F. J. Tupa is the divisional merchandise manager in charge of apparel in the basement store.

By Mr. Haycraft.

Q. How long have you occupied your present position, Mr. Larson? A. Ten years.

Q. How long has Mr. Dayn Donovan occupied his present position, approximately? A. About eight years.

Q. And Mr. Tupa? A. I would say about five years. I couldn't say exactly, offhand.

Q. Before you were general merchandise manager, what did you do? A. I was the general manager of the basement store.

8661

Q. For how long a period of time? A. Seven years.

Q. What was your previous experience? A. Before that I was—I had charge of the physical plant.

Q. At Dayton's? A. Yes. All of this pertains to my employment there. It is covering a period of thirty-two years.

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. Well, I have heard of them, naturally.

8662

Charles J. Larson—For Commission—Direct.

Q. Do you recall when you first heard of the Fashion Originators Guild of America, Inc.? A. To the best of my recollection, late in the fall of 1932.

Q. How did they come to your attention, at that time? Just how did the Guild come to your attention at that time? A. I—this is a long time ago. I would say the first time that it came to my notice was when a meeting was called, to the best of my recollection. Mr. Bjorkman telephoned and asked us to have a representative at a meeting to discuss co-operation with the F.O.G.A.

Q. That was in the fall of 1932, you say? A. Well, I would say it was late in the winter of 1932.

8663

Q. I show you Commission's Exhibit No. 592, and ask if that will refresh your recollection as to the time of that meeting, also Commission's Exhibit No. 593? A. Yes.

Q. Having had your recollection refreshed, would you say the meeting was—when would you say the meeting was that you had? A. I would say it was late in December, 1932.

Q. Now, do you recall what transpired at that meeting? A. Yes, in a general way.

Q. Can you testify as to what took place? A. Well, the question of the F.O.G.A. came up; it was discussed, its aims and how it would work out in our business.

Q. Who brought the matter to your attention? A. Mr. Roy Bjorkman.

8664

Q. What did he say about it? A. Well, my recollection is that Mr. Bjorkman felt that it was something that might be of help to the people in the retailing of garments.

Q. What did he say were the aims? A. Well, frankly, I don't remember that they particularly discussed the aims. The question of their work in eliminating copying of fine garments in the lower-price lines, that was—that subject was discussed.

Q. Was the term "style piracy" used? A. Frankly, I don't remember.

Charles J. Larson—For Commission—Direct.

8665

Q. Are you familiar with the term "style piracy"? A. I have heard a great deal of it in the last two or three years.

Q. Have you heard of it— A. I had never heard the expression used before.

Q. Before when? A. Before—well, I would say before the summer of 1933—the spring season, rather, of 1933, I had never heard the expression used before.

Q. Had you heard the expression "pirating of designs"? A. I had never heard it; that is, to the best of my recollection, I never heard of such a thing.

Q. Well, in what way did Mr. Bjorkman present the plan of the Guild? A. I wouldn't say that Mr. Bjorkman particularly presented it. They were there. We were there as representatives from the different stores to discuss it, and I don't remember that Mr. Bjorkman particularly presented it.

8666

Q. In calling your attention to Commission's Exhibit No. 593, does it refresh your recollection as to what was discussed?

Mr. Albert: If it please the Court, may I at this time note my objection to counsel for the Commission attempting to obtain from this witness what Mr. Bjorkman said at this conference, when Mr. Bjorkman himself was on the witness stand and was perfectly capable of testifying as to what he said and what everybody else said.

8667

By Mr. Haycraft.

Q. Have you refreshed your recollection? Does this refresh your recollection? A. No, frankly, I don't remember.

Q. Was there any other meeting of the Minneapolis retailers at which this matter was discussed? A. Yes, there were several meetings. I couldn't say how many.

8668

Charles J. Larson—For Commission—Direct.

Q. At about what time? A. Why, to the best of my memory there were meetings called, several, between, we will say, Christmas time and the latter part of June in 1933.

Mr. Albert: 1934 you mean. No, it is 1933. That is right.

The Witness: 1933.

Mr. Albert: That is right. I am sorry.

By Mr. Haycraft.

8669

Q. I show you Commission's Exhibits No. 604 and 605 and ask you if you can identify them? A. Yes; I remember the letters.

Q. Did you prepare either or both of them? A. I dictated both of them.

Q. What did you do with them after you dictated them? A. We sent a copy of this to Mr. Bjorkman.

Q. Commission's Exhibit No. 605? A. Yes.

Q. Commission's Exhibit No. 605? A. That is 605 (indicating), and I enclosed Commission's Exhibit No. 604 as an explanatory letter to Mr. Bjorkman.

Q. What was the occasion of preparing these exhibits?

Mr. Albert: That is objected to, if it please the Court, as immaterial. The exhibit is in evidence and speaks for itself.

8670

Mr. Bennett: Well, overruled.

Mr. Albert: Exception.

The Witness: May I have that question again, please?

(The question was read.)

The Witness: The Fashion Originators Guild through their secretary, I believe at that time it was Mr. Golby, had communicated with Mr. Bjorkman as chairman of the Minneapolis group, saying that the group of manufacturers who at that time

were members of the Guild wanted a statement from the Minneapolis group and from its individual members as to their agreement or sympathy with what they were trying to do and the penalty for not filing such an agreement would be that they could not or would not be allowed to view their fall lines.

Q. This was in January, 1933, Mr. Larson? Was that in January, 1933? A. That was in January, 1933.

Q. I show you Commission's Exhibit No. 602, and ask if you can identify that? A. Yes, I remember this form.

Q. Did you sign the original or did you authorize Mr. Bjorkman to sign the original for you? A. My recollection is that the earlier forms of that agreement were sent in to Mr. Golby to see whether or not such a statement would be satisfactory to them. To the best of my recollection, the earlier statements were not signed.

8672

Mr. Albert: Now, if it please the Court, I ask that the answer of the witness be stricken as not responsive. He was asked whether or not he authorized that letter to be signed, not what is happening with other letters or whether or not they had first been sent to New York for approval. I also object to the question in its entirety upon the ground that Mr. Bjorkman, who has previously testified that Mr. Larson saw the letter and that Mr. Bjorkman was authorized by Mr. Larson to send the letter in.

8673

Examiner Bennett: Overruled.

Mr. Albert: May I have a ruling on my motion to strike the answer as not responsive?

Examiner Bennett: I have ruled on it. Denied.

Mr. Albert: Exception.

Mr. Haycraft: Mark this the next exhibit number.

8674

Charles J. Larson—For Commission—Direct.

(The paper referred to was marked Commission's Exhibit 696 for Identification.)

Examiner Bennett: Are these additional exhibits?

Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 696—

Mr. Haycraft: Mark those.

(The papers referred to were marked Commission's Exhibits 697, 698-A and B, 699-A and B and 700 for Identification.)

8675

By Mr. Haycraft.

Q. I show you Commission's Exhibit Nos. 696 to 700, inclusive, and ask you if you can identify those papers?

Mr. Albert: What is that number?

The Witness: Yes, sir, I remember that communication.

By Mr. Haycraft.

Q. Did you receive it? Did it come to your desk? It came to my desk. It was addressed to Mr. Dayton.

8676

Mr. Haycraft: I offer the exhibits in evidence. I might say, Mr. Examiner, this exhibit dated June 21, 1933, Commission's Exhibit No. 696, is signed by J. M. Riley of the A.M.C., Associated Merchandising Corporation. I think I probably had better describe it a little better.

Mr. Albert: Wait a minute. I will give it to you in a moment. Mr. Haycraft, Commission's Exhibit No. 698-A and B, and 699-A and B, and Ex-

Charles J. Larson—For Commission—Direct.

8677

hibit No. 700 are already in evidence as Commission's Exhibits what—?

Mr. Keller: 99, and also Commission's Exhibits Nos. 3-A, B, C, D and E.

Mr. Albert: Do you wish to refer to them by those numbers? I don't see the point in putting in these documents again. I have no objection to the admission in evidence of Commission's Exhibits Nos. 696 and 697.

Mr. Haycraft: Well, with the understanding, Mr. Examiner, that Commission's Exhibit No. 698-A and B, and 699-A and B are in evidence as Commission's Exhibit No. 99, and Commission's Exhibit No. 700 is in evidence as Commission's Exhibit 3—

8678

Mr. Keller: No, Commission's Exhibit—yes, 3-A.

Mr. Haycraft: —3-A, I will not pass the offer of those exhibits, but will—

Mr. Albert: No objection—

Mr. Haycraft: I understand that there is no objection to Exhibits Nos. 696 and 697. I assume that those will be received.

Examiner Bennett: All right.

(The documents referred to, heretofore marked for Identification Commission's Exhibits Nos. 696 and 697, and received in evidence.)

By Mr. Haycraft.

8679

Q. Mr. Larson, did you attend any of the meetings of the merchandise managers referred to in Commission's Exhibit No. 696 and the meeting referred to in Commission's Exhibit No. 696, in the first paragraph? A. No: I did not.

Q. Did you attend any meeting of merchandise managers of retail stores when this matter was considered, the

8680

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subject matter of this letter? A. To the best of my recollection, the F.O.G.A. was never discussed at any meeting of the general merchandise managers.

Q. That you attended? A. That I attended.

Q. Who is Mr. P. J. Riley that signed Commission's Exhibit No. 696? A. He is a director of Retail Research Association and the Associated Merchandising Corporation.

Q. What was your affiliation with the organization? A. We are one of the member stores.

8681

Q. Did you attend the meeting of the Executive Committee mentioned in the last paragraph of Commission's Exhibit No. 696? A. I did not.

Q. Are you a member of that committee? A. All store principals are ex-officio members of the Executive Committee.

Q. Of the American Merchandising Corporation? A. Of the Associated Merchandising Corporation.

Q. Of the Associated Merchandising Corporation. Well, upon the receipt of this letter, Commission's Exhibit No. 696, with the other documents attached, which have been described as 698 to 700, but which are in evidence as Commission's Exhibit Nos. 99 and 3-A, I will ask you what you did with respect to the subject matter.

Mr. Albert: That is objected to as immaterial.

Examiner Bennett: Overruled. You may answer.

8682

By Mr. Haycraft.

Q. Go ahead. A. May I have that question again, please?

(The question was read.)

The Witness: Well, we recognized the fact that it would be necessary for us to have an agreement with the Fashion Originators Guild in order to have

Charles J. Larson—For Commission—Direct.

8683

access to their showrooms; that is, the showrooms of the members.

By Mr. Haycraft.

Q. When you say "us" you refer to whom? A. The Dayton Company.

Q. Yes. Now, go ahead with your answer. A. That is all.

Q. What did you do about it? Did you sign Commission's Exhibit No. 700 for Identification or Commission's Exhibit No. 3-A and return it to the Guild? A. We did not.

Q. Why not?

8684

Mr. Albert: That is objected to, if it please the Court, as immaterial, calling for a conclusion of the witness, and no foundation has been laid whatsoever with respect thereto; in addition, calling for matters outside of the scope of the complaint of the Federal Trade Commission.

Examiner Bennett: I will let him answer. Overruled.

Mr. Albert: Exception.

Examiner Bennett: You may answer.

The Witness: We did not sign that agreement during our entire business career. We have had an unwritten law, under no conditions, if we can possibly avoid it, sign any agreements to buy merchandise from anyone. That was the reason that we did not sign their form agreement. Furthermore, we object to signing anybody else's agreement.

8685

Mr. Haycraft: Mark this.

(The paper referred to was marked Commission's Exhibit 701 for Identification.)

8686

*Charles J. Larson—For Commission—Direct.**By Mr. Haycraft.*

Q. I show you Commission's Exhibit No. 701, and ask if you can identify that? A. Yes, I can.

Q. What is it? A. It is a statement of our frame of mind and our indication of co-operation with the manufacturers, that we drew up and signed and sent to the F.O.G.A.

Q. Is this a carbon copy of it? A. This is a carbon copy of it.

Q. I will ask—I am sorry I asked you that question. I will ask you to examine it again before you answer. Is it a carbon copy? A. Well, in all probability this is the original and the copy went to them. Usually when we draw contracts we keep the original ourselves and send the copy to the other party.

8687

Q. At any rate, the copy or the original of this contract was sent to the Guild? A. Right.

Mr. Haycraft: I offer that in evidence.

(The paper referred to was handed to Mr. Albert.)

By Mr. Haycraft.

Q. In whose handwriting is the pencil notation on there "File Important"? A. It is mine. It is mine.

Mr. Albert: No objection.

8688

Examiner Bennett: Received. I would like to see it, if I may.

(The paper referred to, heretofore marked for Identification Commission's Exhibit 701, and was received in evidence.)

By Mr. Haycraft.

Q. Did you receive any reply to that statement that has just been identified as Exhibit No. 701? A. I don't remember ever having received a reply to it.

Charles J. Larson—For Commission—Direct.

8689

Q. Did you continue to buy merchandise from the members of the Guild after that was forwarded? A. Yes.

Mr. Haycraft: Mark this the next exhibit:

(The paper referred to was marked Commission's Exhibit 702 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 702 for Identification, 702-A and B, and ask if you can identify that in any way? A. Yes, I recognize the letter. It was turned over to me.

Q. By whom? A. Mr. Phillips.

8690

Q. A. A. Phillips? A. And this is a letter from J. M. Golby of the Fashion Originators Guild as to A. A. Phillips.

Q. The pencil notation in the upper right-hand corner, do you recognize that? A. Positively.

Q. Who wrote it? A. Mr. Allen Phillips.

Q. Can you read it? I don't know as I can. Can you make it out? A. Well, yes.

Q. You can make it out?

Mr. Haycraft: I offer the exhibit in evidence.

Mr. Albert: Mr. Haycraft, the offer that you made of Commission's 702-A and B, is already in evidence as Commission's Exhibit No. 12-D. May I suggest that you merely incorporate into the record the written notation of Mr. Phillips that shall apply to Commission's Exhibit No. 12-D instead of having to retype that.

8691

Mr. Haycraft: I would like to have this one go in just as it is, Mr. Examiner, this time.

Examiner Bennett: I beg your pardon?

Mr. Haycraft: I would like to have this go in as it is on account of the pencil notations contained thereon.

8692.

Charles J. Larson—For Commission—Direct.

Examiner Bennett: You want the pencil notations? You are not offering the pencil notations?

Mr. Haycraft: Yes, I am offering the whole thing.

Mr. Albert: If it please the Court, I object to the exhibit going in except in the condition in which it was received.

Mr. Haycraft: This is in the condition it was received by the witness.

Mr. Albert: So that if nine people write on that before the witness gets it, I suppose that it is Mr. Haycraft's contention that it is competent? The letter itself, your Honor, is already in as Respondents' Exhibit No. 12-D.

8693

Examiner Bennett: I will receive the letter without the notations.

Mr. Albert: Thank you.

Mr. Haycraft: Exception noted as to that, Mr.

Examiner:

(The paper referred to heretofore marked for Identification Commission's Exhibits 702-A and B was received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 653-A to C and ask if you saw the original of that or are familiar with it in any way?

8694

Mr. Albert: Now, if it please the Court, I object to the question as being entirely immaterial in addition, being an attempt to contradict the testimony of the previous witness, Mr. Bjorkman, who testified that the Dayton Company, and his representatives were fully apprised of the contents of that letter and knew that it was being sent and subscribed to the substance of the letter.

Mr. Haycraft: The question might be eliciting information which would be corroborative.

Mr. Albert: If it is merely corroborative, then it certainly would be immaterial.

Mr. Haycraft: Oh, no.

Mr. Albert: I don't think Mr. Haycraft needs corroboration of his own witnesses.

Mr. Haycraft: It is very kind of you. The Commission might not think so.

The Witness: I did not see the letter.

Mr. Albert: Exception.

By Mr. Haycraft.

8696

Q. Are you familiar with its contents? A. Yes.

Q. Did you authorize the sending of it, Mr. Larson?

Mr. Albert: May I have that question? I didn't hear it.

(Question was read.)

Mr. Albert: That is objected to, if it please the Court, Mr. Bjorkman has already testified that he was authorized to send it.

Examiner Bennett: Well, we will get information from any source we can. The fact that Mr. Bjorkman so testified does not preclude the Commission.

Mr. Haycraft: I am not positive that he did. I am assuming that he did.

8697

Examiner Bennett: Well, whether he did or not.

The Witness: I would like to call attention to the fact that I did not attend at this meeting.

By Mr. Haycraft.

Q. Did Mr. Donovan call it to your attention? A. I don't remember his having called it to my attention. I heard the matter discussed at a later meeting.

8698

Charles J. Larson—For Commission—Direct.

Q. Now, the letter to which I directed your attention is dated March 21, 1935. Did you attend meetings of the Minneapolis Guild subsequent to that date during the year 1935, when the question of making an agreement with the Fashion Originators Guild, Inc., was discussed? A. May I—did you say 1935 or—

Q. 1935. A. Or 1933?

Q. 1935. Dated March 21, 1935. My question was whether you attended meetings. A. 1935—

Mr. Haycraft: Read the question.
(Question read.)

The Witness: Yes, I did.

8699

Mr. Haycraft: Mark this the next one.

(Thereupon the paper referred to was marked for Identification Commission's Exhibit 703-A and B.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 703-A and B, and ask you if you can identify that? A. Yes; I am familiar with that.

Q. What is it? A. It was a form of agreement drawn up by the Minneapolis Guild and submitted to the Fashion Originators Guild of New York.

Q. Who drew this memorandum, this agreement? A. I think I personally dictated the final—this draft. There were different meetings of committees.

8700

Q. Were you on the committee? A. Yes, I was. I was on one of the committees.

Q. Can you fix the date when this draft of agreement was prepared by you? A. Not any more than—I have a clear recollection that it was during the summer, or early summer of 1935.

Q. Do you recognize the handwriting in the upper right-hand corner in pencil? A. Yes, I do.

Charles J. Larson—For Commission—Direct.

8701

Q. Whose is it? A. J. M. Thomson, who was at that time—was assistant to Mr. Donovan.

Q. Does that date refresh your recollection (indicating)? A. Yes, it confirms it. It was in the summer of—early summer of 1935.

Q. Would you say it was June 12, 1935? A. Yes, that would be approximately correct.

Q. What did you do with this paper which you have identified? A. Copy of this was sent to the F.O.G.A. by Mr. Bjorkman as chairman of the Minneapolis Guild.

Q. That is, you turned it over to Mr. Bjorkman for that purpose? A. Well, that is what it was for. It was a form of agreement—agreement to the Minneapolis Guild.

8702

Q. I show you Commission's Exhibit 601-A and B, and ask you if you can identify that in any way? A. My recollection is that this was undoubt—was one of the various forms that were submitted at our several meetings. To the best of my recollection, that would be one of the earlier forms that we discussed.

Mr. Albert: Referring to 601?

Mr. Feldman: A. and B, yes.

The Witness: That would be 601.

By Mr. Haycraft.

Q. Would you say it was discussed and used in formulating Commission's Exhibit 703-A and B? A. Yes; I would say so.

8703

Mr. Haycraft: I offer in evidence Commission's Exhibit 703-A and B.

Mr. Albert: This agreement was never sent to the F.O.G.A., was it, Mr. Larson?

The Witness: Not to my knowledge.

Mr. Albert: Commission's Exhibit 703-A?

Mr. Haycraft: Better let him see what you are talking about. Show it to him.

8704

Charles J. Larson—For Commission—Direct.

The Witness: I want to see it before I answer it.
(Paper writing handed to the witness.)

The Witness: In my opinion this is the draft—
this particular form was sent to the F.O.G.A.

Mr. Albert: Upon what do you predicate your
opinion?

The Witness: Because it was turned down.

Mr. Albert: Did you receive any letter turning
it down?

The Witness: The Minneapolis Guild did.

Mr. Albert: Have you ever seen such a letter?

The Witness: I beg your pardon.

8705

Mr. Albert: Have you ever seen such a letter?

Mr. Haycraft: I object to that, Mr. Examiner.

Mr. Albert: Now, if it please the Court—

Mr. Haycraft: I think I should be allowed to
proceed in my own way to examine this witness
without being interrupted.

Examiner Bennett: What is the question?

Mr. Haycraft: To obviate it further, I withdraw
the offer of the exhibit at this time.

By Mr. Haycraft.

Q. What was the occasion of preparing this Commission's Exhibit No. 703-A and B, Mr. Larson?

8706

Mr. Albert: That is objected to, if it please the
Court, as being entirely immaterial. The witness
has been—or, rather, the offer has been withdrawn,
I assume as a result of a decision of Mr. Haycraft
not to offer it in evidence.

Mr. Haycraft: I am going to offer it in evidence
later on.

Mr. Albert: This is a further attempt.

Mr. Haycraft: I am laying a further foundation
for it. I will proceed in my own way.

Mr. Albert: I want to object to it, if it please the Court. It is an attempt to contradict a previous witness, Mr. Bjorkman, who testified fully with respect to the various drafts that were presented, and he is the proper and appropriate man to testify what drafts were presented, and if Mr. Haycraft—which had been prepared. If Mr. Haycraft wanted to examine about it he should have put it in through Mr. Bjorkman who would be able to testify definitely as to whether or not it was sent to the Fashion Guild, and with all due respect to the witness, he doesn't know of his own knowledge whether it was sent.

Examiner Bennett: Yes, will—

Mr. Albert: I don't quite understand this business of leaving things out with Mr. Bjorkman who knows fully of them, and trying to put them in through this witness, who is merely a subordinate in the man's guild.

Examiner Bennett: Well, I have already passed upon that. I don't understand that the fact that some witness who is called by any party to a transaction and testified, that that precludes the party calling him from proving any other fact that may be at variance from it. It is not in any way an impeachment as is abundantly shown, recollections of a man engaged in the transactions are rather feeble on this situation. At least, they are not entirely clear, and I wish—I think we should get light from any source we can get it.

Mr. Albert: May I point out to your Honor—

Examiner Bennett: I understand that the testimony of this witness up to this time is that the document was prepared and submitted to Mr. Bjorkman by a committee to be transmitted to the Fashion Originators Guild, and it was his under-

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Charles J. Larson—For Commission—Direct.

standing that it was so transmitted. Now, that is his testimony as to that particular document, and it seems to qualify it as an exhibit in the case.

Mr. Albert: Exception.

Mr. Haycraft: Then I will reoffer it at this time, Mr. Examiner.

Examiner Bennett: It may be received.

(The paper referred to, heretofore marked for Identification Commission's Exhibits Nos. 703-A and B were received in evidence.)

By Mr. Haycraft.

8711

Q. I will ask you, Mr. Larson, what was the occasion of preparing this Commission's Exhibit No. 703-A and B?

The Witness: May I have the question again?

By Mr. Haycraft.

Q. What was the occasion? How did you come to do it?
A. Well, we did it upon the demand of the Fashion Originators Guild that we must have an agreement of some sort in order that our buyers might have access to their lines.

Q. Who made that demand upon you? A. Well, it was made by the Fashion Originators Guild, and also by some of their representatives through letters that came, through the statements of the members, through our own buyers that without an agreement they would not have access to their shown rooms after, I believe it was, the fifth of July to the best of my recollection.

8712

Q. Was that matter discussed at the meetings of the Minneapolis Guild? A. Repeatedly.

Q. And who appointed you on the committee to draw up this agreement? A. Why, to the best of my recollection the chairman, Mr. Bjorkman. The meetings were rather informal.

Charles J. Larson—For Commission—Direct.

8713

Q. Had any of these meetings been attended by Mr. Post, the executive director of the Guild? A. I believe one.

Q. Did you attend that meeting? A. I did.

Q. Do you have any recollection of what he said at that time? A. Why I have a recollection of the substance of his statement.

Q. What was it? A. The substance of Mr. Post's statement was that they must have an agreement signed as a group but signed by the individual stores and it must conform in substance at least, if not in exact verbiage to the standard agreement upon his statement that every agreement that they had signed were identical and that they were identical with the one that they were submitting to us.

8714

Examiner Bennett: We will adjourn until two o'clock for luncheon.

(Thereupon, at 12.30 o'clock P. M., the hearing in the above entitled matter was adjourned until two o'clock P. M., Tuesday, September 1st, 1936.)

AFTERNOON SESSION—2 P. M.

Examiner Bennett: Be in order, please.

Mr. Haycraft: What was the previous question and answer?

8715

(Previous question and answer read by the reporter.)

Mr. Albert: Will you bring out the time on that, as to when it was?

By Mr. Haycraft.

Q. Can you fix the time approximately, please, when Mr. Post addressed the local group that you referred to in

8716

Charles J. Larson—For Commission—Direct.

your last answer? A. I could not fix the exact date. I would say to the best of my recollection it would be in June of 1935.

Q. Was the Dayton Company at that time willing to take the action recommended by Mr. Post?

Mr. Albert: That is objected to if it please the Court. The exhibit is in evidence and speaks for itself. Calls for a conclusion of the witness and no proper foundation has been laid. Also object to the question as leading.

Examiner Bennett: I will sustain the objection to that. I think we better arrive at the fact of the matter as to whether they did take any action, or took that action.

8717

By Mr. Haycraft.

Q. I believe you said this morning that Commission's Exhibit No. 703-A and B, which you identified, which was received in evidence, was not acceptable to the Guild, that is the Fashion Originators Guild? A. That was my understanding.

Q. I show you Commission's Exhibit No. 666-A and B and ask you if you have ever seen that before? A. I could not state that I ever saw the telegram. Some of those were read over the telephone to the various stores and some of them were brought up and read at our meetings.

8718

I do not recall ever having seen that identical telegram.

Q. Do you recall of receiving any notification from Mr. Bjorkman of the contents of this telegram? A. Well, I remember its being discussed. We were informed that the draft that we had submitted was not satisfactory.

Q. Did you have a meeting of the local guild at or about that time? A. Twenty-seventh. My recollection is that toward the end there were so many communications passing back and forth and the time is drawing so close that

I believe some of those things were transacted over the telephone.

Q. Well, what do you mean "the time was drawing so close"? A. You see those lines opened July 5th and it was practically at the time the buyers from the various stores were going to market, the dead-line was drawing pretty close.

Q. I show you Commission's Exhibit No. 168 and ask you whether that will refresh your recollection as to whether there was a meeting at or about that time of the Minneapolis Guild or the committee of that Guild? A. Well, I should judge that would indicate the meetings was called.

Q. Do you remember attending any meetings at that time? A. To the best of my recollection, I attended all of the meetings during the thirty or sixty days before the agreement was signed.

Q. Now, I show you Commission's Exhibit No. 60-A and B and ask you to identify that?

8720

Mr. Albert: 60-A and B, did you say?

Mr. Haycraft: Respondents' Exhibit 60-A and B.

The Witness: Yes, I saw this.

By Mr. Haycraft.

Q. Is that your signature? A. Yes, sir.

Q. C. J. Larson? A. Yes.

8721

Q. On Respondents' Exhibit No. 60-B to the Dayton Company? A. That is my signature.

Q. Do you recall the circumstances under which you signed that? A. Yes.

Q. What were they?

Mr. Albert: That is objected to as immaterial, the document speaks for itself.

Examiner Bennett: Read the question.

8722

Charles J. Larson—For Commission—Direct.

(Question read.)

Examiner Bennett: I will let him answer.

Mr. Albert: Exception.

The Witness: Answer?

Examiner Bennett: Yes.

The Witness: Well, frankly, we felt they were not willing to concede any of the conditions which we thought were fair and reasonable. The Guild practically delivered an ultimatum that we must agree to that in toto or not have access to their lines, and we signed it.

8723

By Mr. Haycraft.

Q. Well, what happened after you signed it? Were you given access to their lines? A. Yes.

Q. Was this agreement fully and wholly satisfactory to them? A. To the Guild?

Q. To the Guild? A. As far as I know. I never heard anything to the contrary.

Q. I show you Commission's Exhibit No. 695-A to E and ask you if you recognize that? A. Will you repeat that question again?

Q. (Previous question read by the reporter.) A. I have no recollection of having gone over or read this statement, or I mean this contract, approved it. I have no recollection.

8724

Q. Do you recall signing a contract of that nature?

Mr. Albert: That is objected to as immaterial. The contract is in evidence as having been authorized by the Dayton Company, assuming the testimony of Mr. Bjorkman—

Examiner Bennett: He may answer if he has a recollection of signing it.

The Witness: I have no recollection of having signed a second agreement. I remember, of course,

very definitely of signing our own form. I have no recollection of having signed this one. If they have a signed copy, I presume I did.

By Mr. Haycraft.

Q. Do you have any recollection of being told by Mr. Bjorkman that the Guild was not satisfied with the form that you submitted on or about the first of July, and which you identified a few moments ago as Exhibit No. 60-A and B?

Mr. Albert: That is objected to, if it please the Court, as being immaterial.

Examiner Bennett: Overruled. He may answer.

8726

The Witness: I don't remember being told that by Mr. Bjorkman.

By Mr. Haycraft.

Q. I show you Commission's Exhibits Nos. 674-A and B, 677, 678-A and B and ask you if they refresh your recollection in that respect? I also call your attention to 676, for the same purpose. Here is the other one (indicating).
A. Will you state that again?

Q. Do they refresh your recollection? A. No, they do not. I have no recollection of our having had any discussions with the chairman or meetings regarding the change of the wording in the agreement. So far as we were concerned, we felt that when we signed the agreement, which they accepted as, particularly accepted as an indication of our co-operation that insofar as we were concerned, the wording would not be particularly relevant to us. We had agreed, as we understood, agreed to do what they asked us to do. I have no recollection of—any clear recollection of a discussion following that.

8727

Q. Did the matter of the co-operation with the Fashion Originators Guild come to your attention at any time after

8728

Charles J. Larson—For Commission—Direct.

July, 1935? A. So far as I know, there was never any question or any friction in our dealings with any of the F.O.G.A. members after the contract was signed.

Q. At least, it never came to your attention? A. Not that I ever heard of.

Q. I show you Commission's Exhibit No. 704-A and B and ask you if you can identify that? A. Yes, I read this telegram when it came in.

Q. Did you receive it? A. I did not. It came to Mr. Dayton. At least, he showed it to me.

Q. From whom is it? A. Fashion Originators Guild signed it.

8729 Q. To whom? A. To the Dayton Company.

Q. Under what date? A. February 16th, it was received in Minneapolis, or 17th. It is a night letter, I believe.

Mr. Haycraft: Offer it in evidence.

Mr. Albert: The respondent, F.O.G.A. will concede Commission's Exhibit 704-A and B, now offered in evidence has been previously offered and is in evidence as—

Mr. Keller: As 571-A.

(Discussion off the record.)

By Mr. Haycraft.

8730 Q. Did you know anything about the controversy indicated in this telegram? A. Yes, I knew of it, naturally. I knew there was a controversy on.

Q. What did you know about that? A. Very little except what was reported in the trade papers.

Q. Had you had any notice from the Fashion Originators Guild prior to the receipt of this telegram with respect to— A. Not to my knowledge.

Q: —with respect to the subject-matter in the telegram?

A. Not to my knowledge.

Mr. Haycraft: Your witness.

Cross-examination by Mr. Albert.

Q. Did the Dayton Company, Mr. Larson, make any answer to that telegram? A. My recollection is that we did not reply to it at all.

Q. When you received that telegram, what did it mean to you? A. Will you state that question again, please?

(Question read by the reporter.)

The Witness: Of course, I can only say what our interpretation of it was. 8732

By Mr. Albert.

Q. Well, let us have your interpretation. A. Our interpretation was that they were delivering an ultimatum to us that we would either have to back down from the stand taken by the Associated Merchants Corporation or else, of course, be barred from seeing the lines of the Guild houses.

Q. And the only thing that you knew about the standing of the Associated Merchandising Corporation was what you read in the trade papers? A. (No response.)

Q. Do you want to change your previous testimony that all you knew about what was in that telegram was what you read in the trade papers or do you want to make some explanation? A. Pardon me, I did not say that. 8733

Q. I am asking you if you want to make some explanation of what you meant? A. I did not say the only thing we knew was what we saw in the trade papers.

Q. What was more important, what you knew about that telegram from the A.M.C., or what you learned from the trade papers? A. Well—

8734

Charles J. Larson—For Commission—Cross.

Q. Did you get any information from the A.M.C.? A. We had some correspondence from A.M.C.

Q. In response to Mr. Haycraft's question you did not tell us that, did you? A. He did not ask me that.

Mr. Albert: May I have read back what Mr. Haycraft's question was, please?

Examiner Bennett: You may.

(Thereupon the record was read by the reporter.)

Mr. Albert: That is all.

By Mr. Albert.

8735

Q. Did you know more about what you heard from the A.M.C. than what you read in the trade papers? A. Did I know more about what—

Q. You knew of the contents of this telegram from what you had learned from the A.M.C., or what you had learned from the trade papers? A. I learned the contents of that telegram from reading the telegram.

Q. You know what the matter referred to, do you not? You know it referred to a controversy of some sort, do you not? A. Yes.

Q. With respect to that controversy, where did you get most of your information from, the A.M.C. or from the trade papers? A. I do not know that I can say, or care to say which was the most and which was the least.

Q. It is immaterial what you care to say. I would like to know what you know about this thing which, as I understand it, is what the Dayton Company is complaining about. Is that how little you know about the business? A. We have not made any complaint.

8736

Q. This telegram refers to a letter signed by Mr. Riley was Mr. Riley authorized to sign the letter which was incorporated in that telegram? A. In so far as I know yes, he is authorized by the executive committee.

Q. Did you know prior to the time that he sent that letter that he was going to send it? A. I did not.

Q. Did your store know anything about it? A. If I did? Mr. Dayton may have known. If he did, he did not say anything to me about it.

Q. Wouldn't he, in the ordinary course of his business in the line of conferring with you as your executive position in the store, mention such an important thing to you? A. Not necessarily.

Q. Did anyone else in the store know anything about it? A. I do not think so.

Q. Well, if Mr. Dayton mentioned it at all, he would mention it to you? A. I would think so.

Q. And if anybody else knew anything about it, then Mr. Dayton is the only one who knew anything about that? A. If he received such a letter, I do not know that he received such a letter.

Q. When did you first see this telegram? A. The day it came into the store.

Q. You saw it immediately upon its receipt or very soon afterwards? A. Well, I presume reasonably soon.

Q. Did you discuss it at all? A. Yes, there was some discussion of it.

Q. Well, did you not ask Mr. Dayton whether or not he had seen that letter before you went out under Mr. Riley's signature, as being authorized by the Dayton Company? A. No, I did not ask Mr. Dayton that.

Q. Did you inquire as to whether or not Mr. Riley had authority to write that letter or had obtained proper authority prior to writing it? A. I did not have any occasion to inquire.

Q. In other words, so far as you were concerned and the Dayton Store was concerned, if Mr. Riley had not specifically requested the Dayton Company's authority to send this letter, you would ratify his action in sending the letter on behalf of the Dayton Company? A. Will you state that complicated question again, please?

8740

Charles J. Larson—For Commission—Cross.

Q. Very simple question; Mr. Larson. If Mr. Riley did not ask for authority from the Dayton Company to send the letter which he did send, then the Dayton Company was ratifying his action in sending the letter? A. If he did not ask it and we granted it, that would ratify it. I would say that under those circumstances we had ratified it, yes.

Q. Do you know what prompted the sending of this letter by Mr. Riley? A. Do I know what prompted sending the letter?

Q. Yes. A. Do I of my own personal knowledge know what prompted it?

8741

Q. I am not asking you to put yourself in Mr. Riley's shoes. I am asking you, do you know why the letter was sent, in plain language? A. It is quite obvious.

Mr. Haycraft: I object to the form of the question. I object to the form of the question.

Examiner Bennett: Well, it has been answered. He said he knew. He said it was quite obvious.

By Mr. Albert.

Q. What was the reason it was sent? A. Part of the controversy.

Q. What controversy? A. Between the F.O.G.A. and the A.M.C. stores and the other stores that were engaged in the controversy at that time.

8742

Q. What was the controversy? In other words, what was all the shooting about, do you know? A. I have my own opinion of what it was about. You are asking me if I know, that is a different matter.

Q. Well, let us have your opinion as to the controversy in hand and predicated upon which you ratified Mr. Riley's letter. A. Our understanding of the controversy was that the A.M. C. felt that the original agreement that the A.M.C. made and several of the A.M.C. stores, only

included or bound them on price lines at \$10.75 and above.

Q. You accented the fact? A. I beg your pardon?

Q. I say, you accented your statement with respect to the A.M.C. agreement? A. Right.

Q. Was that in conflict with your agreement? A. We had no such agreement. Obviously, it is a matter of record. We had an agreement covering down to these price lines.

Q. And, despite that signed agreement, which was the definite commitment of the Dayton Store, you felt that you were perfectly satisfied to have your declaration of co-operation sent back in order to stand in line with Mr. Riley's letter and the other A.M.C. stores, is that correct? A. We would have been satisfied to have it sent back, which was not done. It was not sent back.

8744

Mr. Albert: May I have that last question and answer?

(Question and answer read.)

By Mr. Albert.

Q. Well, if we were to substitute the words "deem withdrawn" for the words "sent back," would your answer be the same?

Mr. Haycraft: Object to that.

The Witness: You say, would we have been satisfied?

8745

By Mr. Albert.

Q. I believe that your answer was that you felt satisfied to have the Guild take the action that it did, except that it did not send back the declaration of co-operation. You are referring to the physical fact that the declaration of co-operation was not physically mailed back, were you

8746

Charles J. Larson—For Commission—Cross.

not? A. We were not concerned whether they mailed it back, or not.

Q. Is it a fair statement, then, to say, Mr. Larson, that, except for the fact that Mr. Riley sent a letter, as set forth in Commission's Exhibit 704-A and B for Identification, and the desire of the Dayton's Store to follow with the other A.M.C. stores and ratified by Mr. Riley's letter, the Dayton Store would to-day still be co-operating?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let him answer.

The Witness: Will you state that again? These are very involved questions you ask.

8747

(Question read.)

Mr. Haycraft: That is too ambiguous, it seems to me.

The Witness: No one can answer that question.

Examiner Bennett: Can you answer it?

The Witness: I cannot answer such a question.

By Mr. Albert.

Q. You understand the question, do you not, Mr. Larson? A. Do I understand the question?

Q. Yes. A. I think as much as anyone could understand such an involved thing. There is a print question of authority involved there. I do not know that I am either authorized or qualified to state whether or not it
8748 would be satisfactory to the Dayton Company.

Mr. Albert: May I have 602, 601, 602, 695, 673?

(Paper writings were handed to counsel.)

By Mr. Albert.

Q. I show you Commission's Exhibit 601-A, Mr. Larson, and ask you if you ever saw that before? A. I could not positively state that I saw this identical—this form. My

recollection is that these were drawn either by the chairman or possibly a committee, and the contents were then discussed and my recollection is that a revised agreement was then drawn or copied, was sent in. That is my best recollection.

Q. Can you give us in chronological order Commission's Exhibit 703-A with respect to 601? A. Yes, I think 601 was the first draft. And what is the number of this?

Q. 703. A. 601 and 703. My belief is that 601 was the first draft and 703 was the second draft.

Q. Immediately following 601? A. Well, I cannot say it was immediately following.

Q. Well, were there any other drafts between 601 and 703? A. Not to my knowledge, not to my knowledge. 8750

Q. Now, can you tell us the chronological order of Respondents' Exhibit 60-A with respect to the two previous exhibits, 601 and— A. You are asking now the order in which 703-A and 60-A?

Q. Right? A. Well, it would be my recollection that 60-A was the latter draft.

Q. That would be after 601 and— A. After 601 and 703.

Q. And 703? A. That would be my recollection.

Q. Can you tell us the order of Commission's Exhibit 672-A?

Mr. Haycraft: That is objected to. The witness was not interrogated about that. I say, I did not ask him about that exhibit. 8751

Examiner Bennett: I beg your pardon?

Mr. Haycraft: I did not ask him about the exhibit which has been handed to him.

Mr. Albert: No; all Mr. Haycraft did was put in a draft of another agreement, which has upset the whole line that we so patiently worked on this morning.

8752

Charles J. Larson—For Commission—Cross.

Mr. Haycraft: I move that be stricken.

Examiner Bennett: I will let him answer.

Mr. Haycraft: I move the statement of counsel be stricken.

Examiner Bennett: It may be stricken as to the personal statement.

The Witness: Now, may I have the question, please?

(Question read.)

A. Well, this one (indicating), there is no number on this one. Here it is, 672⁵A. I cannot tell you the order on that.

8753

By Mr. Albert.

Q. I show you Commission's Exhibit 695, and ask whether or not, regardless of the order of the previous drafts which you have been shown, this was the final agreement, which was entered into? A. I—well, I testified before that I have no recollection of signing the second agreement. Now, I do not recall it.

Q. Do you question at all that your signature is affixed to the instrument, or do you mean you just do not recall having signed it? A. I do not recall having signed it.

Q. There is no doubt in your mind that you did sign it? A. I would not question if they have a signed agreement.

8754

Mr. Haycraft: Right at this time, I call for the signed agreement.

Examiner Bennett: The original?

Mr. Haycraft: The original.

Examiner Bennett: All right. The original will be produced if there is any question as to authenticity.

Mr. Albert: May I point out to the Court Commission's Exhibit 695-A is in evidence as Commission's Exhibit 4, that the copy was supplied to Mr. Seidman, the Commission's investigator, to check and recheck as to the accuracy thereof, and as a result of the Commission's having put this document into evidence as Commission's Exhibit 4, we haven't the original copy, and it has been put into evidence by the Commission without any question whatsoever as to the authenticity of the questions thereon.

I do not understand the purpose of Mr. Haycraft's question. Is he now challenging the fact that this was signed?

8756

Mr. Haycraft: I am just wondering. You are challenging the witness. I think the best thing, today, if you are going to ask this witness, is to produce the agreement where his signature can be seen.

Mr. Albert: The witness has testified he does not doubt it was signed, but he does not recall having signed it.

Mr. Haycraft: He said he did not doubt, if you had the signature, he signed it.

Mr. Albert: Will you wire to New York for that?

Examiner Bennett: Well, it is within the power of the respondents to clear up this matter.

Mr. Albert: I have asked Mr. Post to wire to New York for the original.

8757

Mr. Feldman: The only question is as to how long it will take to get here, but we will wire.

Examiner Bennett: It is not a matter of emergency.

Mr. Albert: We will be here for a couple of days.

8758

*Charles J. Larson—For Commission—Cross.**By Mr. Albert.*

Q. Mr. Larson, when was the first time that the Dayton Company announced its intention of supporting the Guild program with respect to style piracy? A. You mean in regard to any communications to the Guild?

Q. Yes. A. Well, I would say somewhere in the last part of June or first of July in 1933.

Q. Not before then? A. No.

Q. You are positive of that? A. Yes. You mean that we indicated to them?

Q. Yes. A. Well, I have no recollection of any communication to them that either agreed or disagreed with their program.

8759

Q. Did you authorize anyone to indicate to the Fashion Originators Guild the fact that you supported their program? A. Did we authorize anyone to? You mean a written authorization?

Q. Either written or oral. A. I don't know. We may have stated during our meetings that we were sympathetic toward the movement. As a matter of fact, we probably did during their discussions.

Q. Prior to the receipt of Commission's Exhibit 696, had you at all taken up the question of co-operating with the Guild program? A. Pardon me? I couldn't hear that.

(Question read.)

8760

The Witness: Taken up with the F.O.G.A.?

By Mr. Albert.

Q. Taken up with anyone. A. I have no recollection of taking it up with—I don't believe we took it up with anyone else except the Guild.

Q. Had you had any discussion prior to that exhibit with respect to the policy of the Guild as to whether or not you— A. Yes, I had heard and taken part in some discussions.

Charles J. Larson—For Commission—Cross.

8761

Q. With whom? A. During our meetings that were called by the Minneapolis group to discuss this movement.

Q. But aside from this discussion with the Minneapolis group, you had not in any way taken it up with anybody directly in the F.O.G.A.? A. Not to my recollection.

Q. As a result of the discussion that you had with the Minneapolis group, had you made any inquiry of the F.O.G.A. prior to the receipt of Commission's Exhibit 696 with respect to its support? A. I have no recollection of any correspondence with the Guild about the movement. We thought—we understood, at least in a general way, what the movement was in its object.

Q. I show you Commission's Exhibit 602 and ask you whether or not you or Mr. Dayton or Mr. Donovan or anybody else connected with the Dayton Store authorized the listing of the Dayton Store as a co-operating store at that time?

8762

Mr. Haycraft: That is objected to. The witness testified with respect to that on direct examination; a mere repetition of it.

Examiner Bennett: Overrule the objection. He may answer, if he knows.

The Witness: Will you repeat the question?

(Question read.)

The Witness: I remember this (indicating). I remember this letter. It—at least, we would construe it to say that we agreed to their program. This is a result of one of the early meetings, discussing it, we would construe it to mean that we subscribed to all of it.

8763

By Mr. Albert.

Q. Isn't that the only thing that existed between the Dayton Company and the F.O.G.A. with respect to its acknowledgment of the programs of the F.O.G.A. down to 1935?

8761

Charles J. Larson—For Commission—Cross.

Mr. Haycraft: 1935? That is objected to, contrary to the witness' testimony.

Examiner Bennett: Read the question.

(Question read.)

The Witness: No, it is not.

By Mr. Albert.

Q. Now, do I take it, then, that the affixing of the name of the Dayton Company to Commission's Exhibit 602 was authorized? A. It was agreed to.

Q. What was Dayton's conception of the evils, abuses and handicaps of the industry that it intended to support when it permitted its name to be affixed to that exhibit, Commission's Exhibit 602?

The Witness: Will you read the question, please? (Question read.)

The Witness: First, I would like to submit that this does not agree to any program to remedy the evils. We have never admitted, nor did we recognize that they were evils. We merely stated in there that we were sympathetic toward it.

By Mr. Albert.

Q. Well, what were you in sympathy with? A. The movement and the claims that they would be helpful to the industry.

8766

Q. What was meant by this phrase or sentence, Commission's Exhibit 602, to which you have permitted the name of the Dayton Company to be affixed: "It will be their intentions to support only such manufacturers that are ethical, and have high ideals and standards and to endeavor to use every reasonable safeguard to prevent the plagiarism, pirating and copying of style"? A. I don't know what it meant. You had the man who wrote it here this morning. Ask him.

Q. Do you mean to tell this Commission that the Dayton Company permitted itself to be listed as a store supporting the principles laid down in Commission's Exhibit 602 without knowing what it meant? Is that what you want this Commission to believe? Is it the policy of the Dayton Store? A. Are you asking me a question?

Q. Yes. A. We did not subscribe to that. We merely said we were sympathetic toward that movement. That is all it states in your letter.

Q. The letter states: "The following members of the Minneapolis Ready-to-Wear Retailers Association," and you are listed as being a member, is that correct? A. We attended that meeting.

Q. Were you a member? A. Of the Retail Dealers Association?

Q. Minneapolis Ready-to-Wear Retailers Association? A. At that particular time, there was no organization. There was merely a meeting of a group.

Q. Did you wish to be accepted in that group? A. We considered ourselves in it.

Q. When you permitted yourself to be listed in this letter, you meant to be included in that Minneapolis group, isn't that so? A. We assumed that we were included.

Q. Aside from whether you assumed that you were included, or not, did you intend to make a representation in that letter that was not so as to your being a member of that group? A. I would like to call your attention to the fact, if you please—

Q. Certainly, call attention. A. There was no agreement there. We signed no letter. The chairman of that drew it up, quoting the stores that were present and quoting the sentiment of the meeting, that they were sympathetic to this movement.

Q. You were present? A. My recollection is I was present at that particular meeting.

8770

Charles J. Larson—For Commission—Cross.

Q. You did not dissent in any way from this letter going out? A. I have no recollection even that a letter was authorized to be sent. That was the sentiment expressed at the meeting.

Q. If Mr. Bjorkman testified that this letter was authorized and consented to by every representative of every one of the stores listed there, was he wrong in his testimony about it? A. We did not dissent to it, I can tell you that.

Q. You were present when the letter was discussed and the contents declared? A. When the letter was prepared?

8771

Q. Yes. A. I could not testify to that. That letter was not prepared at the meeting to the best of my recollection.

Q. Didn't you know the substance of this letter before it went out? A. If you mean by that did I read the letter, no.

Q. Was it read to you over the telephone? A. Not to my recollection.

Q. Was the substance of it discussed by you and told to you by Mr. Bjorkman or anybody else? A. Not after the letter was drafted.

Q. Did you assist in the drafting of the letter? A. I did not.

Q. Did you know what was going to be sent? A. No. I didn't know the exact statement.

8772

Q. Despite the fact that you did not know what was sent and you did not know whether there was any authorization to send it, you did not know what the contents of it was at the time it was sent; you want this Commission to believe that the Dayton Company permitted its name to be affixed to this document without knowing what was going out? A. We expressed our attitude at the meeting that we were sympathetic toward the movement.

Q. Did you also express your attitude to be: "In fairness to the manufacturers' aims, purposes and objectives, to eliminate the evils, abuses, and handicaps of the in-

dust, naturally, it will be their intentions to support only such manufacturers that are ethical, and have high ideals and standards, and to endeavor to use every reasonable safeguard to prevent the plagiarism, pirating and copying of style"? Did you also subscribe to that? A. Not necessarily.

Q. Well, what were you in sympathy with, if you were not in sympathy with that? A. We were in sympathy with the general movement to, as far as possible and practicable, to discourage copying.

Q. What do you mean by "copying"? A. Reproducing one manufacturer's style by another manufacturer.

Q. And do you agree that that practice is an unethical practice? A. Why, I have no particular opinion on it one way or the other, no strong opinion on it.

Q. In other words, copying is cheating, isn't it? A. I don't know; I cannot say as to that.

Q. Let's all go back to our old school days. We liked to call it copying, but the teacher called it cheating, didn't she?

Mr. Haycraft: I object to that.

Mr. Albert: I think I ought to be allowed a little latitude with this witness, your Honor.

Examiner Bennett: What was the question?

(Question read.)

Examiner Bennett: I will sustain the objection to that.

By Mr. Albert.

Q. Do you know what plagiarism is, Mr. Larson? A. I could not define it positively.

Q. Do you know what the pirating of a style is? A. No, I do not. I never heard the expression until recent years.

Q. What is your conception of the meaning of the expression to-day? A. Well, I presume, at least it is my

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Charles J. Larson—For Commission—Cross.

opinion that they mean by it the copying of a style that someone else has had the designer produce for them. That is only my conception of what it means.

Examiner Bennett: If you have any opinion on that, you may answer.

By Mr. Albert.

Q. Well, now, let us turn to Commission's Exhibit No. 605, which I believe you testified you dictated. A. Pardon me? Is this a draft that I testified to my recollection I dictated?

8777 Q. Yes (handing document to witness). A. Well, that is not one and the same thing.

Q. Of course not. A. Well, this is the accompanying letter.

Q. Right. Now, you dictated Commission's Exhibit No. 605, did you not? A. Yes, I did.

Q. Are you in the habit of using words, the meaning of which you do not know? A. I don't know.

Q. Well, now, from your dictation, will you be good enough to explain to us what you mean by "Naturally, it will be their intention to support only those manufacturers who are ethical and have high standards, and they will endeavor to use every reasonable safeguard to prevent plagiarism, pirating and copying of designs"? Now, what do you mean by your language in that instance? A. You

8778 ask what we mean when we say this?

Q. Yes. A. To the best of our ability, I would say that meant what we stated.

Q. Do you know the meaning of the word "ethical" in the letter?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let you answer, if you can.

The Witness: I cannot define "ethical."

By Mr. Albert:

Q. How many years have you been with the Dayton Company, Mr. Larson? A. A long time, thirty years or more.

Q. Do you mean to tell me that for the thirty years you have been with the Dayton Company, have reached the position that you occupy, and you cannot tell me what is ethical and unethical conduct? A. You asked me to define it.

Q. What did you mean by the use of the word "ethical" in your dictated statement in Commission's Exhibit No. 605? A. I can tell you our conception of ethical is fair dealing, if that satisfies you.

8780

Q. In what respect were you using the term "fair dealing," in which you dictated? A. We said here that we would support manufacturers who were ethical. Most of these manufacturers are people who we have been doing business with for years, many of them; we were satisfied that they were responsible, fair dealing houses, and we continued to do business with them.

Q. What conduct did you have in mind when you were distinguishing this conduct as being ethical from some other conduct that was unethical? What was the unethical conduct that you had in mind? A. I don't know that we had any particular definition of unethical conduct in mind.

Q. What did you mean by "unfair dealing," that you would not deal with others that were unfair? A. I don't know that we had any particular group in mind. If they were a group of houses that were committed to practices which are generally conceded to be unfair, we would have no disposition to support them.

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Q. I do not wish to know, Mr. Larson, out of fairness to you, which houses you considered as using unfair conduct, but I would like you to tell me what it is that you

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have reference to, what conduct it was you believed was unfair and had reference to in that statement. Forget any specific house you might be thinking of. I just want an understanding of what you thought was unfair.

Mr. Haycraft: Object to that. There is nothing in the exhibit to indicate anything about unfairness.

Mr. Albert: The witness is attempting to enlighten us as to what he meant by the term "unethical."

Examiner Bennett: I will let you answer, if you have an answer.

8783

Mr. Albert: Thank you.

The Witness: Read that question again. It is a very involved question.

(Question read.)

The Witness: Well, that is an extremely difficult question, I would say, to answer. I could possibly cite if that were a house or houses which the Guild would call attention to as people that this association we were writing to resorted to practices that were unreasonable or unfair or what they termed "unethical," if it was called to our attention, I think we would instruct our people not to patronize them.

Mr. Albert: May I ask the answer be read?

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Mr. Haycraft: I object to that, the answer being repeated. It is not the witness' fault that counsel does not listen to it.

Mr. Albert: I throw myself on the mercy of Mr. Haycraft, and ask permission that the stenographer read the answer to me.

Mr. Haycraft: I think, Mr. Albert, when counsel asks the witness questions, the witness is entitled to the courtesy of having counsel listen to his reply.

Mr. Albert: I could not follow the answer.

Examiner Bennett: Read the answer.

(Answer read.)

Mr. Albert: Now, I ask that the answer be stricken as not responsive. I did not ask him what he would do. I asked him what it was and what conduct deemed to be unfair in accordance with his statement in Commission's Exhibit No. 605. I would like to get a statement of what the practice is of those who co-operate with the Guild.

Examiner Bennett: Denied.

Mr. Albert: Exception.

By Mr. Albert.

8786

Q. What unfair or unreasonable practices are there you stated you would not support in your last answer?

Examiner Bennett: What was that question?

(Question read.)

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained. I think we have gone far enough into that.

Mr. Albert: Exception.

By Mr. Albert.

Q. Is the unfair, unethical or unreasonable conduct to which you have reference to copying by some manufacturers of original styles produced by other manufacturers?

(Question was read.)

8787

The Witness: My answer would be in there unless possibly under particularly—particular circumstances the mere copying would not necessarily constitute unethical conduct.

By Mr. Albert.

Q. But you are referring to a general situation. Perhaps there were specific cases, but we are talking now

8788

Charles J. Larson—For Commission—Cross.

about something that is prevalent in the industry. That is all I am talking about.

Examiner Bennett: Read the question.
(Previous question read.)

The Witness: That was just answered.

Mr. Haycraft: He has answered.

Mr. Albert: That is satisfactory, your Honor.

The Examiner: Yes, it is answered.

By Mr. Albert.

Q. I show you Commission's Exhibit 701 and ask if any transmittal letter was sent with that? A. I didn't hear that.

8789

Q. Was any transmittal letter sent with Commission's Exhibit 701? A. Not to my recollection. This is a letter. This is a letter.

Q. Yes, but was any explanatory letter of any kind sent along with it? A. Not to my recollection.

Q. That was sent in exactly as-is to the Guild, is that so? A. That is correct, to the best of my recollection. This is three years ago.

Q. And I believe at the time this was identified by you, you stated that that illustrated your frame of mind, isn't that the phrase that you used? A. Yes.

Q. What was your frame of mind with respect to style piracy when you sent this Commission's Exhibit 701 in to the Guild? A. Well, I think I testified before that the term "style piracy"—I never heard of it before, never knew that we had—never considered nor found it an evil. They apparently felt that it was a very serious evil, that these efforts were being organized to reduce at least vicious copying. They simply termed it "style piracy." I never heard the term used before.

8790

Q. That is, up to that time, what had previously been referred to in the industry as the copying of styles was

labelled "style piracy"; is that what you mean? A. Apparently they elected that term.

Q. But prior to that time, copying of styles was known to you; was it not? I mean, are you distinguishing now the fact that commencing on or about that period the practice in the industry of copying styles began to be known as "style piracy," but prior to that time had not been so designated? A. Why, I don't assume that that was the truth. They called it copying instead of "style piracy."

Mr. Albert: I think it is about time for our usual adjournment.

Examiner Bennett: All right. We will take a short recess of about ten minutes. 8792

(A short recess was had.)

Examiner Bennett: You may resume.

By Mr. Albert.

Q. I believe you testified, Mr. Larson, that you dictated Commission's Exhibit 703-A? A. To the best of my recollection, I dictated this particular draft.

Q. Did you also dictate the following: "And believing these principles to be fair and necessary for the proper protection of the public, the retailer, and the manufacturer"?

Mr. Haycraft: Is that all?

Q. (Continuing) "We wish to go on record as intending to co-operate toward attaining that protection subject to the rules and regulations adopted by the Minneapolis Fashion Guild." Did you dictate that? A. I dictated it.

Q. Did you also dictate the following: "The Fashion Originator members will not sell their product to anyone within the City of Minneapolis not a member in good standing of the Minneapolis Fashion Retailers Guild"?

A. Did I believe that they would do it?

8794

*Charles J. Larson—For Commission—Cross.
Perry W. Snyder—For Commission—Direct.*

Q. Did you dictate that? A. I dictated it, yes.

Q. Was that dictated at your instigation? A. No.

Q. Was that suggested as a result of a desire on the part of the Dayton Company to have that clause included in the agreement? A. No, not at all.

Q. The Dayton Company was not in favor of having that clause in the agreement; is that what you mean? A. We would have preferred that it hadn't been in.

Q. In other words, you were not in favor of that clause being in there? A. No.

Mr. Albert: That is all.

8795

Examiner Bennett: Anything more?

Mr. Haycraft: Nothing more.

Examiner Bennett: All right.

The Witness: Am I excused?

Examiner Bennett: Yes.

(Witness excused.)

Mr. Haycraft: I will have Mr. Snyder come forward at this time.

PERRY W. SNYDER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

8796

Direct examination by Mr. Haycraft.

Mr. Albert: Now, if it please the Court, I believe a great number of times thus far the respondent has requested that witnesses or persons intended to be called as witnesses be excluded from the hearing. We had that same matter come up this morning. I believe this gentleman has been here present while I was cross-examining Mr. La

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8797

son, and while it is quite true that I don't protest his being present, because I was busy cross-examining Mr. Larson, I wish to protest the fact that I was not informed by the Commission that anybody was present whom they intended to call as witnesses. I think it has been sufficiently manifested by the respondent that we do not care to have people present, especially during cross-examination, who are intended to be called as a witness.

Examiner Bennett: The matter is not one of vital importance. It is a matter of discretion.

Mr. Haycraft: I can't hear you, Mr. Examiner.

Examiner Bennett: I say the matter is not a vital matter. It is one of discretion and I am not going into that. I will ask, however, that the Commission not have witnesses who are to cover the same ground in the room while other witnesses are testifying.

8798

Mr. Haycraft: That has been observed, Mr. Examiner, from the beginning.

Examiner Bennett: I beg your pardon?

Mr. Haycraft: I say that policy has been observed from the very beginning at your request.

Mr. Albert: If it please the Court, I don't think Mr. Haycraft should assume the responsibility that testimony given by a witness will not be covered by any other witness. I am quite willing to believe that as far as Mr. Haycraft's intentions are concerned that he doesn't believe that one witness will testify to the same thing as another witness will testify to. But we don't know what is going to happen on examination.

8799

Mr. Martin: If your Honor please, I would like to call the attention of the Court that this witness only came into the court room after the recent recess, and I think he was only here while Mr. Albert

8800

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asked probably three questions, during which time he was reading some papers here.

Examiner Bennett: Well, that was my observation. I was not sure about that, but at any rate we are not going into that.

By Mr. Haycraft.

Q. You have been sworn? A. Yes, sir.

Examiner Bennett: What is the name?

The Witness: Snyder, S-n-y-d-e-r.

By Mr. Haycraft.

8801

Q. State your first name for the record. A. Perry W. Snyder.

Q. Where do you live, Mr. Snyder? A. Minneapolis.

Q. What is your occupation? A. Merchandise manager, Powers Mercantile Company.

Q. What business is that concern engaged in? A. Department store.

Q. What do you have under your supervision as merchandise manager? A. What is generally known as the apparel division.

Q. Does that include ladies' ready-to-wear? A. Yes, sir.

Q. How long have you been divisional merchandise manager of Powers Mercantile Company? A. Ten years.

8802 Q. I show you Commission's Exhibits 599-A and B, and ask if you can identify that in any way? A. Yes, sir. A letter written to Mr. Roy Bjorkman, January 17, 1933.

Q. Written by you? A. Yes, sir.

Q. Do you recall the occasion of sending this letter to Mr. Bjorkman? A. I do not.

Q. There isn't any question in your mind but what you sent it? A. No, sir.

Q. Do you recognize your signature? A. Yes, sir.

Perry W. Snyder—For Commission—Direct.

8803

Q. Do you have any independent recollection of the meetings of the ready-to-wear men in Minneapolis at the Athletic Club where the matter of the program of the Fashion Originators Guild of America was discussed? A. Only a faint recollection that at about that time the plan of the Guild program was outlined to us and being an important thing in the ready-to-wear business we discussed it.

Q. Do you recall now who outlined it to you? A. I think Mr. Bjorkman acted as chairman at that meeting.

Q. Did he explain what the program was of the Guild? A. I don't recall it well enough. I believe that we read some—whatever correspondence we had at that time regarding it.

8804

Q. I show you Commission's Exhibits Nos. 454-A to M, and ask you to examine it and see whether or not you are familiar with the correspondence included among those exhibits. Have you examined the papers I have handed you? A. Yes.

Q. Have you seen the originals of those photostats or anything similar to them? A. I don't know whether I have seen the originals of these or not.

Q. You have observed the dates on them? A. Yes.

Q. Do you know whether or not the subject-matter of those exhibits was discussed at the meetings you attended in January, 1933, as shown by Commission's Exhibits 599-A and B?

8805

Mr. Albert: If it please the Court, I would like to warn the witness to look at the date on the exhibit that he has there and to look at the date on the exhibit that is supposed—allegedly is the letter, and I would like to point out to the Commission that the letter in the hands of the witness at the present time is dated some time in June. The letter which he wrote is dated some time in January. I don't see how that letter can refresh his recol-

8806

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lection with respect to the contents of his letter in January. I object to the materiality of the question.

Mr. Haycraft: I move that the statement of counsel for the respondent be stricken as surplusage, and improper, and indiscreet, and discourteous.

Examiner Bennett: It may be stricken.

By Mr. Haycraft.

Q. What is the date on the exhibits that you have in your hand? A. December 16, 1932.

8807

Q. What is the date of the letter that I showed you, Commission's Exhibits 599-A and B? A. January 17, 1933.

Q. Now I will ask you my question again.

Mr. Albert: If your Honor pleases, I want to apologize to Mr. Haycraft. I thought that the letter that the witness had was the other Rentner letter of some time in June.

Examiner Bennett: All right.

Mr. Haycraft: Read the question.

(The question was read.)

A. I can't recall that far back distinctly enough to tell you.

8808

By Mr. Haycraft.

Q. Can you recall whether any correspondence with the Guild was read in the meeting by Mr. Bjorkman? A. No; I don't recall that there was any direct correspondence read.

Q. Do you recall whether or not he read to you or allowed you to examine his so-called declaration of co-

Perry W. Snyder—For Commission—Direct.

8809

operation of the Guild at that time? A. I do not recall that we did. I can only assume that we did from my own letter.

Q. And you refer to Commission's Exhibit 599-A and B? A. (Witness nods head affirmatively.)

Q. In this letter you have stated: "It is our belief at Powers that the Program and contract as outlined by Fashion Originators Guild of America is not wholly practical and not one to which we can subscribe to the extent of signing it." Will you tell me whether you have any recollection as to what you had in mind when you made that statement? A. We were beginning—we were just at the beginning of the discussions of the Guild program at that time, and I presume that was our feeling at that particular time, when we were not fully acquainted with the plan and program.

8810

Q. Do you recall now what there was in the plan that you did not consider practical at that time? A. No, I do not. I think it was things we did not fully understand at the time.

Q. Did you ever sign a declaration of co-operation? A. No. By that I take it that you mean—

Q. By your own firm? A. The Fashion Guild form.

Q. Yes. I mean by that, did the Power Mercantile Company ever sign a formal form of co-operation in anti-piracy between it and the Fashion Guild of America? A. Independently, no.

Q. Referring to the first, second, third and fourth numbered paragraphs of this letter—and I will not read it into the record—I will ask you whether or not there were questions in your mind or they comprised questions in your mind at the time you wrote that letter?

8811

Mr. Albert: That is objected to, if it please the Court. The exhibit is in evidence.

Examiner Bennett: Read the question, please.
(The question was read.)

8812

Perry W. Snyder—For Commission—Direct.

A. The letter states that there were questions in our mind at that time.

Q. What I am trying to find is whether or not you now subscribe to the statements that you made in your letter at that time, that is all. Not entirely, no.

Mr. Haycraft: Will you please read the question?

(The question was read.)

By Mr. Haycraft.

Q. By that you mean some other points were cleared up since that time?

8813

Mr. Albert: That is objected to, if it please the Court, leading the witness.

Examiner Bennett: I will let him answer.

A. Well, that is a big question. I would say that many of points have been cleared up since that time.

Q. Would you say that all of them had (handing paper to witness)? A. Yes, in a degree.

Q. Will you explain that answer? A. Well, the first question is: What is a copy and what is an adaptation? I think it has been proven since then that it doesn't make any difference.

8814

Q. That they are one and the same thing, you mean? A. No; not necessarily the same thing, but at that time there must have been some reason in our minds to—as to the use of the term “copy” and “adaptation.”

Q. What is the distinction between the two? A. It is a very difficult thing to answer, and I think that the time has proven that it doesn't make any difference.

Q. What do you mean “it doesn't make any difference”? A. Because we have been, so far as the Guild is concerned, dealing entirely in whether the merchandise were copies or not.

Perry W. Snyder—For Commission—Direct.

8815

Q. Not dealing with whether they were adaptations?

A. (Witness nods head affirmatively.)

Q. In your judgment and opinion what is the difference between a copy and an adaptation? A. A copy in my personal opinion is where a direct copy of it is made, as far as the style is concerned; and adaptation is taking certain general ideas from the original and making it into another number, making it into another item.

Q. In your opinion, is there apt to be any confusion between the two? A. Somewhat, yes.

Q. That is what you had in mind when writing that paragraph in the letter? A. That is right.

Q. What about the second point? Has that been cleared up? A. Yes.

8816

Q. How has that been cleared up? A. In that we have not had the trouble with the getting satisfactory merchandise in the lower price lines that we anticipated at that particular time.

Q. By that you mean—

Mr. Keller: Will you speak louder, please?

By Mr. Haycraft.

Q. What about the next point? A. Yes; I think that has been answered in our experience since.

Q. In what way? A. The fact that we have been able to get merchandise which eliminated this thing which seemed like a problem at that particular time.

8817

Q. What was the problem at that time? A. The foregoing plan preventing a particular style from being sold at any price except the one at which it was originally brought out.

Q. And what is your answer to that? A. I say that time has proven, experience since that time has proven that the problem which we anticipated here has not developed. In other words, similar merchandise is available which answers the purpose for an original style.

8818

Perry W. Snyder—For Commission—Direct.

Q. What about the next one? A. Our experience has answered that question also.

Q. What is the answer? A. It has been satisfactorily answered in that we have been able to obtain—let me change that answer. I have gotten it incorrect. I would say in this that there are some cases where exact copies are not available to stores handling Guild merchandise but that we have found that similar merchandise is available satisfactory to take the place.

Q. By "satisfactory to take the place," you mean it will sell equally as well as so-called hot numbers of non-Guild manufacturers?

8819

Mr. Albert: That are copies of Guild manufacturers, I think is what the witness said.

The Witness: Yes.

By Mr. Haycraft.

Q. Where do you get the garments? Do you get those garments from Guild manufacturers? A. You mean copies of other Guild merchandise?

Q. You said something could be used in place of the copies of the Guild manufacturers which you said sold just as well? A. Not from Guild.

Q. Where do you get those? A. Where do we get them? We get them from other dress manufacturers. They may be Guild and they may not.

8820

Q. Then, I take it, from your testimony that your competitors who are not co-operating with the Guild, have no advantage over you in the sale of low-priced merchandise in the Minneapolis market; is that correct? A. Very little, if any.

Q. Would you say that is true of Lerner's?

Mr. Albert: Objected to, if it please the Court, no foundation.

The Witness: I don't know whether I can answer that question. What is the question?

(The question was read.)

Examiner Bennett: Can you answer that?

The Witness: I said I don't believe I can answer that question.

Examiner Bennett: I see. In other words, you don't know whether it is true or not?

The Witness: No.

By Mr. Haycraft.

Q. I take it, then, you are 100 per cent. sold on the Guild program at the present time and are an active member of the local Minneapolis Guild?

8822

Mr. Albert: If the witness can answer that question 100 per cent., your Honor.

The Witness: It contains two questions.

By Mr. Haycraft.

Q. Are you sold on the Guild program, Fashion Originators Guild, 100 per cent. at the present time? A. I don't think that it is possible to say 100 per cent.

Q. Are you a member of the Minneapolis local Guild? A. Yes, sir.

Q. Have been since it was organized? A. (Witness nods head affirmatively.)

Q. Now, in this second numbered paragraph: "Can we afford to shut ourselves off from that broad section of the market which now, particularly on the lower-priced lines that are so important, get most of its style inspiration from the creation of the higher-priced manufacturers"—Was it true at the time that you wrote this letter that there was a broad section of the market that got most of its style creation from the higher-priced manufacturers?

8823

Mr. Albert: That is objected to, if it please the Court. The exhibit speaks for itself. We are now going back on direct examination of the witness as to what he has already testified to. It has been rather difficult to determine whether Mr. Haycraft is questioning on direct or whether he is cross-examining, but I think this is patent cross-examination.

Examiner Bennett: The witness, as I understood it, said that is his conception, or was his conception at the time of the situation.

Mr. Haycraft: I think that is true.

Examiner Bennett: Well, I presume it is true in all particulars if it is true. I will sustain the objection.

By Mr. Haycraft.

Q. Well, then, I will ask the witness whether or not there is at the present time a broad section of the market that gets most of its inspiration from the creations of higher-priced manufacturers.

Mr. Albert: That is objected to. It has been previously testified to by the witness.

Examiner Bennett: Overruled. You may answer.

A. I think that probably is a little true.

Q. Is that still true? A. Yes.

Q. And when you say your question had been answered, you did not mean that the market had changed, but you referred to your ability to get other garments; is that it?

A. I think the market has changed somewhat, perhaps, but I think the thing which seemed to be a big problem at that time has not been proven to be as much of a problem as we expected it to be.

Perry W. Snyder—For Commission—Direct—Cross.

8827

Q. But it still is a problem? A. If it were not, there would be no occasion for the Guild's efforts.

Mr. Haycraft: I ask that the answer be stricken.

Mr. Albert: If Mr. Haycraft leads with his chin, I don't think we should be blamed if he is hit.

Mr. Haycraft: I ask that the witness be instructed to give a responsive answer.

Examiner Bennett: It may be stricken. Please answer. Read the question.

(The record was read.)

By Mr. Bennett.

8828

Q. Just answer whether it is or not, whether at the present time it is still a problem. A. Yes, it is still a problem.

Examiner Bennett: Yes. That is all.

Mr. Haycraft: That is all.

Cross-examination by Mr. Albert.

Q. At the time you wrote this letter of January 17, 1933, Mr. Snyder, you stated: "While we are in accord with the principles in respect to style piracy, we cannot sign this agreement." What were the abuses of style piracy, to which you have reference?

Mr. Feldman (indicating paper writing): Third paragraph. 8829

A. The copying of—the copying of styles of merchandise, styles of dresses at lower prices.

Q. Would you say that that abuse has been somewhat eliminated as a result of the Guild program?

Mr. Haycraft: That is objected to.

8830

*Perry W. Snyder—For Commission—Cross.
Dayne Donovan—For Commission—Direct.*

Mr. Albert: That comes into the question, if your Honor please.

Examiner Bennett: Overruled.

A. Yes, we believe that some improvement has been made.

Mr. Albert: That is all.

(Witness excused.)

8831

DAYNE DONOVAN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. State your name. A. Dayne Donovan.

Q. Where do you live, Mr. Donovan? A. 2212 Newton South.

Q. Minneapolis? A. Minneapolis.

Q. What is your occupation? A. I am a division merchandise manager with the Dayton Company.

Q. How long have you occupied that position? A. I was merchandise manager for the Dayton Company since 1923.

8832

Q. Have you been manager during that entire time? A. Yes; I have, in various departments, not always the same.

Q. How long have you occupied your present position? A. Three years.

Q. Before that what position did you occupy? A. Well, I had a similar position but a fewer number of departments.

Q. What departments do you have under your supervision now? A. You would like them by number or by description?

Dayne Donovan—For Commission—Direct.

8833

Q. Both. A. Department 300, women's and misses' suits department; Department 310, women's coats.

Q. Would you mind giving the price range, if you can, on these? A. All right. Suits—

Q. Women's and misses' suits? A. Misses' suits, all ranges, from, well, roughly, \$7.95 to \$195. And, of course, includes summer items, linens, and things like that.

Mr. Albert: Retail price?

The Witness: I am giving you the retails right through. Women's coats, the same is true.

By Mr. Haycraft.

Q. 310? A. 310. That is 310, \$7.95 to \$195, \$250, perhaps. Misses' coats, 320, the same range as women's coats. 312, larger-sized coats, the same ranges as the other departments. 332, larger-sized dresses running from \$8.95 to \$100. 333, women's model shop dresses from \$39.50 to \$200. 353, misses' model shop dresses, the same price ranges as the women's. 334, women's Barbara Lee dresses.

8834

Mr. Albert: Women's what?

The Witness: We call them Barbara Lee. They are medium priced dresses ranging from \$17.95 in the summer to \$35. And 354, misses' medium priced Barbara Lee dresses, the same price range. 338, women's budget dresses ranging from \$5.95 retail to \$19.95, to \$22.95. And 358, misses' budget dresses, the same price ranges as the women's. 371, junior or sub-deb coats, suits, dresses, and sports wear, ranging from all prices; starts at a dollar in sports items, and up. And the next is Department 380 on sports wear. Again price ranges vary with the article carried from \$1.95 up to \$200.

8835

8836

Dayne Donovan—For Commission—Direct.

Q. May I interrupt just a moment? Is this Department 371—you say it has coats, suits, dresses, and what else? A. Sports wear, junior sports wear in junior sizes.

Q. Well, the dresses and suits, where do they begin? A. Dresses and suits the same as the other suit departments, from \$7.95 up to \$69.50 or \$59.50, as the occasion requires.

8837

Q. How about the 380? A. 380 is the sports wear department, and we carry a large variety of items in the sport department, some of them like slacks and shorts from \$1.95 up to \$8 or \$10 and so on. It is hard to give you a complete range there, but we carry good ranges in all departments. And I have one more. Department 390. Blouses and sweaters starting at a dollar on occasion and as high as \$48.75. That should be blouses, sweaters and skirts. Pardon me. Are there fourteen departments there, Mr. Haycraft?

8838

Q. Yes. What are your duties in connection with these particular departments you have just enumerated? A. I supervise the selection of the merchandise that goes into those departments. I work with the buyers on occasion in the market, although not regularly. I help the departments in the preparation of advertising plans and the preparation of selling budgets for the season or for the month. I assist in the watching to see that we carry profitable selling lines, that we carry representative assortments at all times and that our merchandise standards are sufficient as the Dayton Company wishes us to have it, in quality and price range. Our selling force is aggressive in doing its job, and I presume fifty other minor things, which are in the regular course of supervision.

Q. Does each one of these departments have a buyer? A. Not each one. Some buyers handle two departments.

Q. When was it that you became merchandise manager, in charge of these fourteen departments? A. It was in October, 1933. You understand that I had some of these prior to that time.

Dayne Donovan—For Commission—Direct.

8839

Q. What did you have prior to then? A. Prior to that time I had Departments 333, 353, 334, 354, 400 and 371.

Q. What was your title at that time? A. It was divisional merchandise manager, as well.

Q. Who had charge of the other departments, or were they in existence? A. They were in existence. Mr. Allen Phillips has charge of the ones that I have not mentioned.

Q. Will you testify as to who the buyers are at the present time for these various departments and indicate, if you can, their approximate length of service? A. Length of time we have had them in our employ?

Q. Yes. And length of time in the position of buyer in these departments. A. All right. Department 300, suits. Mrs. Lucille Welch is buyer. She has had the title of buyer for eight months. She assisted in the department and I took direct charge of the purchasing before that time in addition to my duties as divisional merchandise man.

8840

Q. All right. A. Mrs. Nellie Johnstone is in charge of our model frocks shop; is in charge of our four departments, 333, 353, 334 and 343.

Q. That is 333, 343, 353 and 354? A. That is right. Those are generally our better dresses. We comprise what we call the model shop and the Barbara Lee section, and their price range runs from \$17.95 although \$25 is the regular price line on up to \$195 or higher. Mrs. Johnstone came with us, I believe, in August or September, 1933. I wouldn't like to be held too closely on that. I know it has been several years.

8841

Mr. Albert: That is close enough.

The Witness: Now, Mr. Thomson has been buying our inexpensive or budget dresses since last February 1st.

8842

Dayne Donovan—For Commission—Direct.

Q. That is 338 and 358? A. 358.

Q. Is he your assistant? A. Prior to that time, he was my assistant in the merchandise office. Then we dispensed with Mrs. Chase, who had been buying the lower-priced dresses, or budget dresses, on the 1st of February, and Mr. Thomson replaced her.

Q. This year? A. This year, possibly '36.

Q. Miss Myrtle Pender has been buying for Departments 312 and 332, the larger-sized departments, I believe, since 1931, considerable length of time in any case. Mrs. Helen Hoefield has been buying Department 371 or the junior or sub-deb apparel, as we call it, since about 1932. Mrs. Florence McKenny has been buying sports wear, Department 380, since February 1st, 1936. And Mrs. Saul, Elizabeth Saul, has been buying the blouses and sweaters since about 1931.

8843

Now, from 1931 to 1936, to February 1st, 1936, Miss Saul also bought sports wear, at which time they divided both of these departments and put Mrs. McKenny in charge of sports wear and Mrs. Saul in charge of the blouses, sweaters and skirts.

Examiner Bennett: We will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 4.35 o'clock P. M., an adjournment was taken.)

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Dayne Donovan—For Commission—Direct.

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Room 307, Federal Building,
Minneapolis, Minnesota,
September 2nd, 1936.

Met, pursuant to adjournment, 10 o'clock A. M., C.S.T.

Before; JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: You may proceed.

8846

DAYNE DONOVAN thereupon resumed the stand for the Commission, and, having been previously sworn, testified further as follows:

Direct examination by Mr. Haycraft.

Q: At the last session, Mr. Donovan, you were listing the buyers of the various departments in Dayton's, I think, all except for Departments 310 and 320. A. The buyer there is Mrs. Estelle Baker, and she joined us in June, 1930, as buyer.

Mr. Albert: Is that for both?

The Witness: 310 and 320 both, yes. Am I too far away for you?

8847

By Mr. Haycraft.

Q. What are the functions of the buyers for these various departments? A. Well, the buyers are responsible for the accomplishment of the sales plan which we lay out in two six-month seasons. They are responsible for the gross profits, for the net profits, for the character of

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Dayne Donovan—For Commission—Direct.

merchandise which is shown, for their advertising. In fact, I have heard Mr. Dayton state that he cannot think of anything for which the buyer is not responsible, which pertains to the conduct of their department.

Q. Do they work on a budget for their various departments? A. What sort?

Q. Either buying or selling? A. You mean a stop budget?

Q. Yes. A. They have plan stop budget figures, and they are planned or presumed to be relatively close to them.

8849

Q. To what extent do they report to you? A. They report to me, well, I can only say in a general way. I do not hold them for whether or not they stock this line or that line particularly or not—I do expect them to keep fashionable merchandise and keep abreast or probably ahead of our competitors. They consult on advertising plans, on our stock figures from week to week, and on their sales plans and figures, and report to me at the end of each trip as to what they have accomplished.

Q. What are the seasons in Minneapolis observed by Dayton's, buying or selling seasons? A. We start—there is no buying season especially. We start our selling season, on what we call spring lines, February 1st, and it ends the first of August. The fall season starts, of course, on the 1st of August and ends on the 1st of February.

8850

Q. Take the spring lines that you sell from the 1st of February to the 1st of August; when do you buy the garments sold during that time? A. We buy a few of them probably in latter December, a portion in January, another portion in February and we continue to buy them until I would say July 4th or 6th. We go down on July 5th and we clean up what lines we need.

Q. Do your buyers make more than one trip to market during the season? A. Yes, they make anywhere from

two to eight trips or nine trips, depending on the department.

Q. What are the principal markets for women's and misses' dresses, suits, coats, for the spring season? A. Well, New York, that is, of course, the principal market for all of those things that you have mentioned, coats, suits and dresses.

Q. What are the minor markets? A. We use Chicago, some Boston, a little, a trifle perhaps in Philadelphia, not very much, use St. Louis a little, again not very much, and we have been using Los Angeles some, San Francisco a little, and we have a local market where we buy a few things in Minneapolis and St. Paul. The major market, of course, is New York.

8852

Q. Now, with respect to the fall season, what is your buying practice for garments that you sell in the fall season? Where do you buy them? A. When?

Q. Where and when? A. We start buying fall garments June 15th. We get into it heavily right after the Fourth and we continue very strongly in August and September, October, and a lesser amount in December, a still lesser amount, but still a little in January. Then we are through with fall purchasing.

Q. Do you have the same market for your fall merchandise that you have for your spring? A. Yes, roughly the same. They might vary a per cent. or so, depending on—

Q. Is there any difference between the type of merchandise you purchase for your fall selling season and your spring selling season? A. Oh, yes, there is a great deal of difference.

8853

Q. Will you describe that? A. Well, the character of the garments is entirely different.

Q. Will you explain? A. Well, a winter coat is quite a different proposition than a spring coat. We sell a great deal more higher-priced winter coats because of the furs, which make them high-priced, because the value in these

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Dayne Donovan—For Commission—Direct.

is more than the average value in the spring coat and they have to be heavier and, as a rule, interlined for us.

In our territory, at least, the price range is quite different in the spring and fall. We seem, in this country, to sell lower-priced merchandise in the spring, although not as large a quantity. Our fall season is the largest and considerably the higher-priced season of the two. The reason is we have about eight months of winter in this country and the women are willing to spend on winter wardrobes, apparently, and less to spend on summer wardrobes. The summer wardrobes are wardrobes which fill in for occasional demand, hot weather, although we sell some high-priced things in the spring.

8855

Q. Is there any difference in the type or character of dresses or suits sold to women and misses in the fall and spring? A. The same is true. The fabrics that are used in the fall are higher-priced, better fabrics. We sell many more higher-priced dresses in the fall than in the spring by quite a margin. The margin there is very marked.

Q. Are they silk or other fabrics? A. You mean in the fall?

Q. Fall and spring; make a comparison. A. We sell silks in the fall, we sell wool, we also sell a few in the spring, but not many. We sell quite a few synthetic in the fall, sell what we call costumes in our better dress department, which are of better fabrics, higher priced, and usually fur trimmed.

8856

Q. What means do you employ in attracting the trade to your store to buy your merchandise, referring now to the departments under your supervision? A. Well, we have a number of mediums. We use the newspapers. We have a publication of our own, which goes out four times a year, called the "Datonian." We participate in certain magazine promotions which are—which have other stores along with them as well as our own. We use windows and occasionally use mail. I think those are the chief mediums by which we sell our merchandise.

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8857

Q. What would you say is relatively the standing of the Dayton Company in the Minneapolis territory as to the volume of women's dresses and suits and coats sold?

Mr. Albert: Objected to as irrelevant.

Examiner Bennett: Will you read the question?

(Question read.)

Examiner Bennett: Overruled. You may answer.

The Witness: I assume you mean generally, or do you mean the three lines you mentioned?

by Mr. Haycraft.

8858

Q. The garments which are sold in the departments over which you have supervision? A. I believe we sell more in total than any other store.

Q. Now, in addition to the departments which you have described, under your supervision, do Dayton Company have a basement store where garments of this nature are sold? A. Yes, they do.

Q. In your departments, will you testify as to the type of clientele that you cater to? A. I think I could best describe that by saying we cater to the medium and better trade. That is, the person of moderate means on up to the very well-to-do woman. We carry, of course, a good substrata of goods for the distinctly lower-priced women; but our main efforts are directed towards the medium and better clientele.

8859

Q. How are the garments displayed in the various departments for the public to make their selection? What is the practice in Dayton's as to that? A. Well, the better garments, the higher-priced garments are, as a rule, displayed very sparingly. There may be two or three out to indicate the character of the merchandise we are carrying, and as you work into the lower-priced departments,

8860

Dayne Donovan—For Commission—Direct.

we have a larger proportion of our garments on the floor, so that the customer can see and select from them.

Q. Now, you say your better garments; what department would you include in that? A. I would call our better dresses, the dresses from Departments 333, 334, 353 and 354. In the other departments we have no separate subdivision between better and lower-priced garments, although I will give you my idea of the price ranges, if you wish.

Q. Will you do it, please? A. Pardon me?

8861

Q. Yes. A. We consider better coats in the fall season from \$79.50 up. We carry them in a separate division in our stock and sell them in a separate place. We carry better suits in with the cheaper suits, but we consider suits as suits retailing from \$69.50 up, in the fall season. Our sports wear is not divided. We consider better sports wear as dresses selling from \$22.95 up.

Q. Yes. A. Does that cover enough for you?

Q. Yes, that is satisfactory. A. I am referring to the fall season.

Q. Was there any difference in the spring? A. Yes.

Q. What would be the difference? A. In the spring I would call better suits, suits selling from \$39.50 up. Better dresses are the same as I have indicated for the fall. Better coats in the spring are coats retailing for \$49.50 up.

8862

Mr. Albert: \$49?

The Witness: \$49.50 up.

A. (Continuing) —and, better sports wear would be dresses retailing from \$17.95 up. I am leaving knits out of consideration. If you wish me to give them, I will.

Q. Now, your Department 371, known as the junior sub-deb department, I believe, that includes not only coats, suits—not only suits and dresses, but also coats: is that correct? A. That is correct.

Q. And it sells sweaters and such things as that? A. And sweaters, skirts, blouses and knitted apparel in junior sizes.

Q. What portion would you say of that department is given over to the sale of suits and dresses? Would you testify as to that? A. I will endeavor to break them down by sections, if you wish.

Q. All right. A. I would say that 60 per cent. of that department's business is dresses. By that I mean silk and wool daytime and evening dresses. I would say 15 per cent. comes from the sale of coats. I would say another 15 per cent.—I will change that. Ten per cent. from the sale of suits, and the balance—what have I got? Ninety per cent.? The balance, whatever it may be, is misses' sports wear, knitted apparel, skirts, blouses, a few belts, and things of that kind.

Q. What is the situation in Department 380 in that respect, 380 and 390? A. The percentage?

Q. Yes. A. As to the break-down?

Q. Break them down. A. There I would state again about 60 per cent. of our business comes from the knitted dresses. About 20 per cent. comes from silk and wool and synthetic sports dresses. The balance from such articles as slacks, shorts, Cullottes, knitted sports capes, riding apparel, and one or two very small items. We do not carry bathing suits in that department. Blouses and sweaters, Mr. Haycraft, is a separate section.

Q. In your opinion what reputation does the Dayton Company bear in this community as a place to obtain women's garments? A. I believe it bears a good reputation. I don't mean to imply that it bears the very best. I think there are a few stores in the country that bear a slightly better reputation for garments, but I think ours is distinctly good.

Q. I am referring, of course, to this community served by Dayton's—and, by the way, how large a territory would

8866

Dayne Donovan—For Commission—Direct.

you say is served by Dayton's Department Store? From where do your customers come? A. Yes, I understand. Our customers come from over the State of Minnesota, from Montana, the Dakotas, the western part of Wisconsin, the northern part of Iowa, in the main. We get a few requests for certain lines and things from various parts of the country.

Q. In your opinion is there any department store in this area that you have described that has a higher reputation than Dayton's for the character of merchandise that you have to sell in your department? A. I believe that there is no store in this territory that has as high a reputation, as good a reputation.

8867

Q. What factors, in your opinion, are responsible for the reputation that Dayton's has, that the Dayton store has that you have just referred to? A. I believe that reputation is due to careful and conscientious endeavor on the part of the ready-to-wear division to carry the merchandise that the people of the Northwest want, to obtain it no matter what the difficulty for them, if it is at all possible to obtain it, price it fairly, very reasonable in the matter of returns, very truthful in their advertising and manner of presentation of their merchandise.

8868

Q. Does the character or the type of source of supply of garments sold in your department have anything to do with the factors as you have just enumerated them? A. It is a very important part of building and maintaining a reputation.

Q. Will you explain that? A. I mean simply that the kind of merchandise offered as to quality, up-to-dateness in style and a range of assortments by size, by color, and by style selections is a very important factor in maintaining a good reputation in the garment business.

Q. Are you familiar with the Fashion Originators Guild of America, Incorporated? A. As a retailer I am fairly well familiar with it.

Q. When did you first learn of its existence? A. In the latter part of 1932 or the early part of 1933.

Q. How did it come to your attention? A. I believe I was informed that Mr. Larson had attended a meeting of Minneapolis retailers at which the Fashion Guild proposition to curb copying was broached to them.

Q. Did Mr. Larson discuss it with you at that time? A. I don't believe I could call it a discussion. He mentioned that there had been such'a meeting. I do not know how much importance he attached to it at the time. He recognized, I presume, that there would be a discussion later.

Q. Did you hear any more about it later? A. Yes, late in the spring of '33.

8870

Q. What occurred? A. I believe that our store was somewhat hesitant as to whether or not the plan proposed was practicable or not, but the Guild informed us that we could not visit the good lines or see the good lines unless we co-operated. I know that there was some form of declaration or some document sent which signified that we would co-operate with them.

Q. Of what importance to a retail dealer such as Dayton's is the opportunity to use lines of display, to see them on the part of the manufacturers? A. Well, we feel that it is of importance, of paramount importance.

Q. Why? A. Because we feel obliged to offer our clientele the best that can be obtained in the market, and we have to have access to the whole market in order to judge what is best and make selections which we believe will please our customers.

8871

Q. What is the custom of the garment manufacturers with respect to the display of their merchandise at the time they offer it for sale to the retailer? A. Well, custom in what respect, Mr. Haycraft?

Q. How do they display it so that you can see it? What is the custom? What do your buyers do when they go to

8872

Dayne Donovan—For Commission—Direct.

buy merchandise? A. Well, we see most of the merchandise, naturally, in the showrooms, displayed on a model or living model in the case of the better manufacturers; in the case of cheaper manufacturers, it is shown on a hanger or in the hand, as they say. We also see a good deal of merchandise which is brought to us in our office in New York for our inspection, and occasionally lines are brought to us out of Minneapolis. I believe that covers the chief ways in which we see our merchandise.

Q. What was the program of the Guild that was brought to your attention in the summer of 1933?

8873

Mr. Albert: I think the witness said in the spring of 1933, your Honor.

By Mr. Haycraft.

Q. Well, the spring of 1933, if that is correct. I meant—
A. I don't know. There may have been more to the original declaration which they asked us to sign than I now recollect. The intention and the main purpose of it, as I understand it, was to eliminate copying as low as \$16.75 or \$16.50. I believe those were the price lines used then.

Q. Cost price? A. Cost price.

Q. What would be the usual retail price for a garment costing \$16.50 in your store? A. The usual retail price would be \$29.75. We do mark them occasionally less; don't think ever more.

8874

Q. What was the method employed to protect copying as you understand it, in the Guild program?

Mr. Albert: What period of time, may I ask your Honor?

Mr. Haycraft: In 1933.

By Mr. Haycraft.

Q. When you first learned of it?

Mr. Albert: Approximately what month?

Dayne Donoxan—For Commission—Direct.

8875

Mr. Haycraft: I haven't got the month. If the witness has it in his mind he will give it to you.

The Witness: This original declaration of the intention, or declaration which was signed, which the Guild did accept, I believe was sent in in July, either June or July of last year. It is barely possible it was August but it was about the middle of 1933. And they asked us not to buy copies down as low as \$16.50, and not to give out garments to copy, and I believe they asked us to stamp our orders so that copies might be returned if we inadvertently bought them within the prescribed ranges.

By Mr. Haycraft.

8876

Q. Did you continue through that year to get merchandise from the Guild manufacturers in 1933? A. All of '33 we bought Guild merchandise as much as we wished.

Q. How about '34? A. Yes. We got all the merchandise we desired in the Guild—from the Guild people in 1934.

Q. Beginning in the year 1935 was there any further development of the Guild program that came to your attention? A. Yes; I believe that they talked about taking in the Dress Creators League. In other words, extending the program so that we would not be permitted to buy copies as low as \$10.75.

Q. How did you learn that? A. I believe that I learned of it through our New York office, Mr. Bergdahl.

8877

Q. Connected with the American Merchandising Corporation? A. That is right.

Q. Did you meet anyone from the Guild during the early part of 1935 with whom such program was discussed? A. I recall that in, I believe it was May or early June Mr. Goldston, I believe, visited us from the Guild with a view of getting our co-operation on extending the program of protection as low as \$10.75.

8878

Dayne Donovan—For Commission—Direct.

Mr. Haycraft: Mark this the next exhibit.

(The paper referred to was marked for identification Commission's Exhibits 705-A, B and C.)

By Mr. Haycraft.

Q. I show you now Commission's Exhibit Nos. 705-A, B and C, and ask you if you can identify that? A. I could identify the letter.

Q. What is it? A. It is a letter from Mr. Albert M. Post of the Fashion-Origination Guild of America to Mr. D. Donovan of the Dayton Company, dated May 3rd, 1935.

8879

Q. Does this refresh your recollection? As to when Mr. Goldston called upon you? A. I would say it is prior to May 3rd, 1935.

Q. That is, his visit was prior to that time? A. I believe so.

Mr. Haycraft: Mark this the next exhibit.

(The paper referred to was marked Commission's Exhibit 706 for Identification.)

By Mr. Haycraft.

Q. Did you reply to this letter from Mr. Post? A. I remember that I did reply to it, or I believe I did reply to it.

8880

Q. I show you Commission's Exhibit No. 706 and ask if that is a carbon copy of your reply? A. That is the reply.

Q. Did you send the original of this to Mr. Post? A. I did.

Mr. Haycraft: I offer it in evidence, 705-A, B and C, and 706.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The papers referred to, heretofore marked for identification Commission's Exhibits 705-A, B and C, and 706, were received in evidence.)

By Mr. Haycraft.

Q. I call your attention to the last paragraph on page 2, which says: "I have a letter of April 29th, from our Mrs. McDonald. Apparently the returns that you made were not accepted, and certainly without the use of the warranty clause their position is both legally correct and essentially fair." Who was Mrs. McDonald? A. Mrs. McDonald was the person who was known as the Guild shopper. She worked under the direction of the Guild, and they, indirectly at least, paid her a salary.

8882

Q. What did she do as Guild shopper in Minneapolis? A. Well, all that I know of that she did was to hunt for copies of merchandise which was presumed or known to have been originated by the Fashion Originators Guild and report those copies both to the stores who were signatories of the agreement and to the Guild.

Q. Did she visit Dayton's? Had she been doing it at that time, in May, 1935? A. I believe she had visited our store once or twice.

Q. Had you met her on previous occasions? A. I had known Mrs. McDonald by sight for a long time. I do not know as there was any formal introduction. I knew that is what she was. She told me there was no attempt to hide the fact.

8883

Q. What did she say to Dayton's or any employee of Dayton's with respect to the garments that she found that she said were copies of Guild garments? A. Yes.

Q. That is, copies of garments manufactured by members of the Guild? A. She asked me to return those copies, since we were members of the Guild.

Q. Had you been doing it prior to May, 1935? A. I believe we had returned them in every instance. I have no recollection of any time we failed to return a copy.

Q. I notice in your reply to Mr. Post, dated May 8, 1935, Commission's Exhibit 706, you state in the second paragraph: "You know, of course, that we have two inexpensive dress departments on our second floor and several basement dress departments, all of which compete with the chain stores and mail order houses, which, by the nature of their business, have no need of the F.O.G.A. and no conditions with them. It is possible that this fact really need not concern us, but, at least, it has been one reason for our hesitation." Now, I will ask you what you meant by "our hesitation"? A. Well, I believe we had proposed a new contract, going as low as \$10.75, and required definitely all orders to be stamped with the so-called warranty clause, and we had indicated to the Guild that we would continue to co-operate on the basis of the old agreement or to co-operate on the basis that we had been co-operating with the Guild, and that we hesitated on that account for fear that it might be difficult for us to do the business we had felt we were entitled to do if we carried out the Guild program in full.

Q. Who were the chain stores that you had in mind at that time? A. Well, Lerner's was one. There is another store, which I believe is a part of a chain, called Morrison's. I do not think at that time they were members of the Guild. There is a little shop called Avon, which I believe is part of a chain, and I do not believe they were at that time Guild signatories. I frankly do not know whether Sally's was a participant in the Guild program or not. They were in competition at any rate.

Q. What price range did they sell at? A. Lerner's sold principally up to and under \$10 or \$12. Sally's up to \$25, I believe, retail, and the other stores varied somewhere between \$6.98 and \$18 or \$20.

Q. How would those stores affect Dayton's? What did you have in mind in writing this letter? A. Well, if they had access to merchandise, copied—not copied, which was

able, and which would attract business away from us, and if a part of the market was close to us and not close to them, it naturally gave them an advantage over us, and we questioned whether that was good business for us to go into an agreement which permitted that.

Q. Now, in this third paragraph of your letter to Mr. Post, you state: "We cannot quite agree with you, however, that we are the only store not using the warranty clause, as we are quite sure a number of other Twin Cities stores are also not using this clause." What had you done to inform yourself with respect to that statement? A. I asked Mr. Thomson, who was assisting me in the office at that time, to telephone some of the other stores—there are four or five whom we consider important handlers of merchandise—and asked whether or not they were using the warranty clause.

8888

Q. What did you find out?

Mr. Albert: That is objected to, if it please the Court, as the extremest kind of hearsay that the Commission has yet attempted to put in.

By Mr. Haycraft:

Q. Were these stores co-operating with the Guild at that time?

Mr. Albert: That is objected to, if it please the Court; no foundation has been laid. What would this witness know about what other stores were doing? I don't think he knows, personally any how.

8889

Examiner Bennett: Well, find out what he knows. Make a foundation.

The Witness: What is the question? I am sorry.

Examiner Bennett: Just make a foundation.

8890

*Dayne Donovan—For Commission—Direct.**By Mr. Haycraft.*

Q. Do you know anything about whether or not the stores Mr. Thomson called up were co-operating with the Guild? A. I know that most of them felt they were co-operating with the Guild.

Mr. Albert: I ask the answer be stricken as not responsive to the question. I believe the Court's instruction to Mr. Haycraft was to lay a foundation and find out the source of this witness' knowledge, whatever it may be.

Mr. Haycraft: Let me have Commission's Exhibit 602.

8891

Mr. Albert: Do you mean Respondents' 60-A?

Mr. Haycraft: No.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 602 and ask you whether or not you called upon any of the names of retail dealers attached to that exhibit for the information which you gave to Mr. Post with respect to the warranty clause? A. I called on Mr. Hyman of Atkinson's, or Mr. Thomson did at my direction.

Q. What did you find out there?

8892

Mr. Albert: That is objected to, purest hearsay. This witness does not know anything else except what Mr. Thomson told him, somebody else told him. We are in Minneapolis, if the Commission wants that information, they certainly can call these stores.

Examiner Bennett: I will overrule the objection and hear it for what it is worth.

Mr. Albert: Exception.

Examiner Bennett: It is information secured in the regular and usual course of business, is it not?

The Witness: It was.

Examiner Bennett: Yes.

The Witness: Mr. Thomson called Mr. Hyman of Atkinson's and noted on a slip of paper that Mr. Hyman said they were not using the stamp. He called either Mr. Newton or Mr. Dunfy at Donaldson's and obtained information from them. He called Powers Mercantile Company and obtained information from them. He called John W. Thomas Company and obtained information. He called one or two others, I am not certain as to which.

by Mr. Haycraft.

8894

Q. Will this refresh your recollection (handing paper writing to the witness)? A. That is the notation Mr. Thomson left on my desk after calling these stores here enumerated. That indicates whether they were or whether they were not using the F.O.G.A. stamp on May 6, 1935.

Q. What was the information furnished you by Mr. Thomson with respect to the names of retail dealers?

Mr. Albert: Same objection.

by Mr. Haycraft.

Q. (Continuing) On Commission's Exhibit 602, as to whether or not they were using a stamp in May, 1935?

Examiner Bennett: Overruled.

8895

Mr. Albert: Exception.

The Witness: Young-Quinlan's answered that they were not using the stamp, various ones that they were not using the stamp. Jackson-Graves answered that they were using the stamp. Harold's answered that they were not using the stamp. Donaldson's answered that they were not using the stamp. Raleigh's answered that they were not using the stamp. John W. Thomas answered that

8896

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they had been using the stamp for two months and were using it at the moment. Jackson's answered that they were not using the stamp, emphatically. We received no answer from Maurice L. Rothschild's.

By Mr. Haycraft.

Q. Was the information, which you just now have related, the basis of your statement in the third paragraph of Commission's Exhibit 706 to Mr. Post? A. What is it?

Q. Which I read to you a moment ago? "We cannot quite agree with you that we are the only concern not using the warranty clause." A. That is the basis for that paragraph.

Q. Did you meet Mr. Post when he came to Minneapolis following this letter? A. No, I did not.

Q. Where were you at the time Mr. Post was in Minneapolis, May 13, 1935? A. I was either in New York or in California.

(Thereupon a document was marked Commission's Exhibit 707 for Identification.)

By Mr. Haycraft.

Q. Mr. Post was in Minneapolis on May 13, 1935. I will ask you whether or not Commission's Exhibit 707 for Identification will refresh your recollection as to where you were?

Mr. Albert: Careful, there are 3,000 miles difference, Mr. Donovan.

Mr. Haycraft: Move that be stricken.

The Witness: I was in New York when I sent this wire.

8898

By Mr. Haycraft.

Q. What is the date of the wire? A: May 13, 1935.

Q. While you were in New York did you attend a meeting of the ready-to-wear department managers of stores that were members or co-operating with the Associated Mercantile Corporation? A. I cannot say positively; I believe I did.

Q. Will this telegram refresh your recollection on that (handing telegram to the witness)? A. No. This does not refresh my recollection on that particular point.

Mr. Albert: May we have that telegram marked for identification, your Honor?

Mr. Martin: It is in.

8900

Mr. Haycraft: Where have you been, Mr. Counsel?

Mr. Albert: I do not know, New York or California. Definitely in this country, though.

By Mr. Haycraft.

Q. When did you return from this trip that you were on, return to Minneapolis? A. I do not know definitely; approximately May 18th.

Q. Well, subsequent to your return, what were the developments with respect to the Guild program in Minneapolis, as you recall them? A. The Guild?

Mr. Albert: May we have this specifically noted, your Honor, whether we are speaking now about the F.O.G. A. or Minneapolis Guild?

8901

By Mr. Haycraft.

Q. Very well. Fashion Originators Guild of America, Incorporated. A. The question was, what were the developments subsequent to my return from this particular trip?

8902

Dayne Donovan—For Commission—Direct.

Q. That is right. A. Following from May 18, 1935, on?

8903

Q. Yes. A. The Guild requested us to sign a new program with them, including the stamping of all orders and including protection of dresses, I believe in all price ranges, and stated that our previous arrangement was now unsatisfactory and urged us to do so either through a Guild action or through an individual store action, that is, local Guild action or through individual store action, and urged us to do it in a hurry if we wished to see fall lines. We, as a Guild, feeling that there was some doubt as to the practicability and as to the advisability of stamping all price ranges of dresses and as to the practicability and advisability of allowing the retailers or the style and so-called Piracy Committee in New York to judge whether or not our dresses were copies, drew up a declaration proposing that dresses at \$6.75 and below not be considered as copies and that we be the judges of whether or not a dress was a copied style, or not, in other respects agreeing with the Guild program.

Q. I show you Commission's Exhibits 703-A and B and ask if that was the agreement you have in mind (handing paper writing to the witness)? A. This is the proposed agreement which we drew up at that time.

Mr. Albert: The Dayton Company drew up at that time, you mean?

8904

The Witness: No, the Minneapolis Fashion Guild.

By Mr. Haycraft.

Q. What was done with that agreement to your recollection? A. It was offered to the Fashion Originators Guild of America.

Q. Did they accept it? A. For approval.

Q. Did they accept it? A. They did not.

Q. Well, then, what was the next step? What happened next? A. After they had wired us that the proposed agree-

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8905

ment that we drew up was unacceptable to them and outlined the reasons, I believe that, at our suggestion, drew up another one, which was based upon an agreement in use by Fashion Guilds at other cities, and which had been and was acceptable to the Guild. However, the two exceptions we requested were, of course, eliminated in this new agreement that was drawn up and sent in by our Minneapolis Guild.

Q. You are referring now to the final one? A. No; it is my recollection that was just the second one. It was not the final one. I think there were three before we got one that would stick.

Q. I show you Commission's Exhibit 672-A to D, and ask you if you can identify that? A. That, I believe, is a copy of the second agreement which we sent in.

8906

Q. Was that accepted? A. No, not in total. I believe the wording of the wire was that it was accepted temporarily as a declaration of intention but that there would have to be certain alterations made in parts of it before it could be finally accepted.

Q. I now show you Respondents' Exhibit 60-A and B, and ask you if you are familiar with that document? A. Well, I think that is the final one that was sent in.

Q. I show you Commission's Exhibit 695-A to E, and ask you if you are familiar with that one?

Mr. Albert: If your Honor please, in order that we do not have the same confusion, I suggest that in the exercise of your discretion you ask Mr. Haycraft to show the witness the five or six or seven drafts which were drawn before the final one. He obviously does not know now what it is all about. I do not want to waste time on this all over again.

8907

Examiner Bennett: Well, I think he has them all now, except—

The Witness: Except this one.

8908

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Mr. Albert: No, he missed one, your Honer.

Examiner Bennett: What?

Mr. Albert: He missed one. He missed Exhibit 601, I think.

Mr. Haycraft: I would like to be allowed to conduct this as I see fit without being lectured and hampered.

Mr. Albert: I am not lecturing. I am trying to save time.

Mr. Haycraft: By counsel for the respondent.

Examiner Bennett: All right.

Mr. Martin: That is a novel condition for you.

8909

The Witness: I am amending my previous answer.

Mr. Albert: You mean amend or change?

Mr. Haycraft: I object to the statement of counsel.

The Witness: I am now inclined to think that this was the last; it was one of the two, I think. There is no date on it that I can see.

By Mr. Haycraft.

Q. Did you notice the date? A. No, I have not. There is no date on it that I can see.

Mr. Albert: As yet.

8910

The Witness: About the 26th of August. Oh, yes, this is the final one because I recollect that it was the latter part of August before we finally got one that was acceptable.

Mr. Haycraft: All right.

The Witness: Unless that one is more recent. I do not think it is.

Mr. Albert: What was that addition to the answer?

(Previous answer read.)

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8911

(Mr. Haycraft handed a paper writing to the witness.)

By Mr. Haycraft.

Q. There was a letter of transmittal, I might inform you, on this, which was marked for identification, dated July, 1933. A. Then that is the final one.

Q. That is Commission's Exhibit 695-A to D is the final one? A. That is the final one.

Q. Now, Mr. Donovan, were you consulted with respect to the position to be taken by Dayton's with relation to the Fashion Originators Guild, Incorporated, program in Minneapolis?

8912

Mr. Albert: At what time, may we ask?

Mr. Haycraft: In the summer of 1933, after you had returned from your trip?

The Witness: Yes, I attended several meetings of the local Guild, and the matter was discussed at times in our store.

By Mr. Haycraft.

Q. Now, at the meetings of the local Guild, who attended besides yourself? A. I did not attend all of them, because, of course, I am absent part of the time, but the ones I did attend, they were usually attended by all of the prominent dealers of ready-to-wear here in the city, the specific ones, I presume you have a record of. They were nearly all represented.

8913

Q. Did you attend any meeting of the local Guild on or about June 12, 1935? A. If there was a meeting at that time, I did attend it.

Q. Referring to Commission's Exhibits 703-A and 703-B, will ask you whether or not you have any recollection of the meeting at which that agreement was framed? A. I remember having seen this agreement and agreeing to it

8914

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after it was drawn up. I have no definite recollection of attending that meeting at which it was drawn up.

Q. Does this agreement 703-A and B represent Dayton's position with respect to the Fashion Originators Guild program at that time?

Mr. Albert: If it please the Court, the witness can be excused for calling a draft an agreement, but I object strenuously to Mr. Haycraft calling a draft an agreement.

Examiner Bennett: What was the question? (Question read.)

8915

Examiner Bennett: Let us not quarrel about the word "agreement"; let us make it document.

The Witness: That document did represent the feelings of the Dayton Company at that time.

By Mr. Albert.

Q. Has there been any change in the position of the Dayton Company since that document was prepared? A. I do not think that there has been any substantial change in their feelings.

Mr. Albert: May I have the last answer? (Answer read.)

By Mr. Haycraft.

8916

Q. Did you make any recommendations to the officials of the Dayton Company with respect to the policy of the Dayton Company in their relations with the Fashion Originators Guild of America, the program of that Guild? A. I urged that we sign up with the Guild on whatever basis they would take us.

Q. For what reason? A. Because I felt the conduct of our business required that we have merchandise such as Guild manufacturers make.

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8917

Q. During the year 1935, did or did not Dayton Company co-operate with its program in Minneapolis? I mean by "Guild," "Fashion Originators Guild, Incorporated."

A. I would say we co-operated fully during 1935 and Mrs. MacDonald, I believe, stated to Mr. Larson that we had given as good as or the best co-operation of any store in town.

Q. Did you continue that co-operation during the year 1936? A. We did not.

Q. When did you discontinue the co-operation? A. We discontinued it some time following the red carding boycott which was imposed on it.

Q. Do you recall when that was? A. February, 1936.

8918

Q. Can you give us a more definite date than that? A. Well, the first I heard of it was February 25th, although I have knowledge of the fact it was started on February 17th.

Q. Where were you on February 17th? A. I was taking a week's vacation. I was on the island of Bermuda.

Q. You learned it on your return? A. Yes. The boat was due back on the 25th and I learned it on the 26th.

Q. Where were you when you learned of it? A. In our New York office.

Q. Well, now, at the time that you learned of the boycott of Dayton's by Fashion Originators Guild, Incorporated, what did you do about it? A. Will you repeat the question, Mr. Haycraft?

8919

Examiner Bennett: Will you repeat the question?

(Question read.)

The Witness: To the best of my recollection, nothing at that immediate time.

By Mr. Haycraft.

Q. Well— A. It seemed to have been an accomplished fact; there was not much to do.

8920

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Q. Did you make any attempt to buy any merchandise from Guild manufacturers subsequent to that date? A. We have, at various intervals, attempted to buy from Guild manufacturers.

Q. With what success? A. No success.

Q. Now, at the time that— A. May I amend that, Mr. Haycraft? It might come up later. I would say with very little success.

Mr. Albert: Are you beginning to lay foundations, Mr. Donovan?

The Witness: I do not know. I am just answering the best I can.

8921

By Mr. Haycraft.

Q. Are you in a position to testify as to the extent to which the Dayton Company was purchasing merchandise from the members of the Guild prior to the red carding, say during the latter part of 1935?

Mr. Albert: May it please the Court, since we seem to be going into figures, I would suggest this is a fairly good time to take our usual recess, if Mr. Haycraft has no objection. It is about twenty-five after eleven.

Examiner Bennett: That is all right. Do you care to have a recess?

8922

Mr. Haycraft: No, I am not asking for it.

Examiner Bennett: Well, is this a good stopping time?

Mr. Haycraft: Not any better than any other.

Mr. Albert: Well, if it is not any worse, your Honor, I would like to have the recess now.

Examiner Bennett: All right. We will take a recess of ten minutes.

(Thereupon a short recess was taken.)

Examiner Bennett: Be in order, please.

Mr. Haycraft: Have you the last question?

The Reporter: Yes.

Examiner Bennett: You may resume.

Mr. Haycraft: Read the last question.

The Reporter: "Q. Are you in a position to testify as to the extent the Dayton Company was purchasing merchandise from members of the Guild prior to the red carding, say, during the latter part of 1935? A. Yes, I am."

By Mr. Haycraft.

Q. Will you please do so, and in your answer indicate, if you can, the type of merchandise and the price line or department where it was used. 8924

Mr. Albert: That is objected to, if it please the Court, no proper foundation has been laid as to the sources of the witness' knowledge.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

The Witness: I may answer?

Examiner Bennett: Yes.

The Witness: May I refer to some memos I have in my pocket?

Mr. Haycraft: Yes.

Examiner Bennett: Yes. They will be subject to inspection if you refer to them. 8925

The Witness: This memo refers to the Guild manufacturers whom we were using in the fall of 1935 and the per cent. of purchases from all Guild manufacturers by departments, in the fall of 1935.

Mr. Albert: Can you fix the months, Mr. Donovan?

The Witness: No, I cannot. This is for the entire season.

By Mr. Haycraft.

Q. What department number is that? A. In the suit department, Department 300.

Q. Go ahead. A. We used 3.4 per cent. of merchandise from Guild houses. Our chief sources of supply being Mangone and Carmel.

Q. How do you spell Mangone? A. M-a-n-g-o-n-e. Phillip Mangone & Company.

And Departments 310 and 320 in the fall of 1935, Mangone and Carmel were again our chief sources of supply and we used between 3 and 4 per cent. of Guild merchandise there also.

8927 In Department 332, which is larger-sized dresses, we used 7 per cent., or, to be accurate, 6.9 per cent. of our merchandise from Guild's houses, and our chief resource there was J. L. Friedman Company.

In Department 333, which is one of our women's better dress divisions, the one handling the bulk of our higher prices merchandise, we used 82.5 per cent. Guild manufacturers' merchandise, the chief of whom was A. Traina Company, Mathews-Cadetsky, Edgarette, Joseph and Ben Barnett, Jennie Moscovitz, Jackson-Beinard and Herman Biespel.

8928 In Department 373, which is the corresponding division in misses' sizes of our—of the top of our better dress business, we used 91.4 per cent. of Guild merchandise. Our chief resources there were Maurice Rentner, William Bass, Isenberg Sons & Company, J. J. Rothenberg, Herman Biespel, Strauss-Miller and Rudolph.

Mr. Albert: What was that last?

The Witness: Rudolph.

By Mr. Haycraft:

Q. Let me ask you a question there. Did you mention Louise Barnes Gallagher, Incorporated? A. We used

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8929

Louise Barnes Gallagher, yes, also. I didn't mention it before. I have a somewhat longer list than what I am giving you. I am picking out the ones that seemed to me to be very important.

Q. How about Milgrim's? A. Yes, also Milgrim's.

Q. How about Charles Lang? A. Lang. We used Rose Barrach & Lahm.

Q. Spectators Sports, Incorporated? A. We used Spectators Sports. There is a much wider list than I am giving you. I am just giving you the high lights of people we bought from.

Q. What about Milton Altmark? A. Well, Milton Altmark was used in this department but used more in the next price range below under what I would classify as 354 department.

8930

Q. All right, proceed. A. In Department 334, which I might say are medium priced dresses——

Mr. Albert: What price range do you mean by that?

The Witness: I mean that they start at \$25 and run to thirty-nine seventy-five retail. We used 66.7 per cent.

By Mr. Haycraft.

Q. Is that 334 now? A. 334, Guild merchants. Our chief resources there were Baron Dress, Dolces, Henry Gans, Grossman-Greenberg and Joseph Greenberg. There were a number of others.

8931

Department 354, medium priced dresses retailing from twenty-five to thirty-nine dollars and seventy-five cents, used in the fall of 1935 76.8 per cent. merchandise from Guild houses. Our chief resources were first Milton Altmark, William Bass, Casino Dressés, Charles Lahm, J. M. Silverman, Jack Hertzog, Star-Friedlander, and numerous other small accounts with the Guild.

Q. Ma I ask you whether or not you bought any from Capri Frocks? A. Yes.

Q. Bender & Hamburger? A. Yes, indeed.

Q. You mentioned Eisenberg? A. I did not, but we also bought some.

Q. Fiegenbaum & Adelson? A. Yes.

Q. Mary Lee Dance Frocks? A. Mary Lee, yes.

Q. Did you mention Frank Starr-Friedlander? A. I believe I mentioned Starr-Friedlander.

8933 Q. Proceed. A. Department 338, women's budget dresses, selling from \$7.96 to \$22.95 retail, we used 24.1 per cent. merchandise from Guild sources, the chief of which were Rosen Bros., C. H. D. Robbins and Lytle, I believe it is Lytle Bros.

Q. Did you also buy from Bob Burns? A. We did.

Q. E. N. Marcus? A. We did.

Q. And Bernard Ginsberg and Adelson? A. Yes, we did.

Q. Proceed. A. Department 358, which is the misses-sports division, corresponding to 338, dresses retailing at \$7.95 to \$22.95; I have no figures on them through an oversight on my own part, as to the percentage of merchandise bought from Guild resources. I can secure that if you wish it. I just plain forgot to put it down. Our chief resources there were Witlin Schneider, Aywon dresses, Daytime Dresses and International Dresses. We used; in addition, a large number of other Guild resources

Q. Now, you have given the principal resources in the principal departments that you mentioned? A. I did not.

Q. Proceed. A. In Department 371, Junior Dresses suits and sports wear, we used, in the fall season of 1935 28.1 per cent. of Guild merchandise, that is, merchandise from Guild houses. Our chief resources there were Mulligan Dresses, Incorporated, Ben Ginsberg, Junior Guild Junior League, Bon Ray, Will Steinman Junior Dresses and Lang-Cohen.

Q. Did you mention International Junior Dresses? A. We bought from them. I did not mention them.

Q. Proceed. A. In Department 380, sports wear, for the fall season, our purchases from Guild manufacturers amounted to 4.8, 4.8 per cent, the department total. Our chief resources there being Sam Steinberg, Star Maid, Incorporated.

I might call your attention to the fact that I am referring only to silk and wool sports dresses, excluding knitted dresses and knitted suits, concerning which I testified that more than half of our department's business comes from—

Q. Well, what about 371, did you include anything about the dresses in that in your testimony there? A. Yes, I included Ben Ginsberg, the most important coat and suit house to us.

8936

Q. I see. A. Formerly.

Q. Does that complete your testimony with respect to Guild resources in the fall of 1935 or do you have others?

A. That completes the list of the major purchases, and the percentages we bought from Guild houses with the exception of Department 358, where I haven't the percentage available. The resources I have named, I would classify as major resources, but we used other Guild resources at times for certain articles which they were making, as we needed them, and some of them were in the process of development and would have been very large resources this fall.

8937

Q. I will ask you to obtain that percentage at the noon recess, Mr. Donovan. A. I will.

Q. What were your principal resources beginning in the spring season before you were red carded in those same departments? A. All right, Department 300 had none that I would classify as main resources for spring garments, in the spring of 1935.

Mr. Albert: May I ask the answer be repeated
(Answer read.)

By Mr. Haycraft.

Q. You are giving spring garments for the spring of 1935? A. Is that what you asked me for, Mr. Haycraft?

A. All right. A. The coat departments, Department 310 and 320 bought 6.5 per cent. of their merchandise in the spring of 1935 from Guild manufacturers, of whom Grossman-Spiegel was the chief. We bought a few things from Philip Mangone and perhaps Eisman Bernstein, perhaps one or two others. Department 332, larger-size dresses, bought 10 per cent. of this merchandise from Guild houses in the spring of 1932 and there Friedman was our main account.

8939

By Mr. Albert.

Q. You mean the spring of 1935, don't you? A. Perhaps I don't mean, I am sorry.

Q. You said 1932. A. I am sorry, I mean 1935. Department 333, the top of our better dress business bought 75 per cent. of its resources from Guild resources in the spring of 1935, chief of whom were Andy A. Trainor, Ed Gerrick, Matthews Kadetsky, Joseph Greenberg, Herman Beispiel and Gardner & Schwartz. There were also other Guild resources used. Department 350 the top of our misses' better dresses, used 77.4 per cent. of its merchandise in the spring of 1935 from Guild resources.

8940

By Mr. Haycraft.

Q. What was that percentage again? A. 77.4 per cent. Our chief resources in that period were Maurice Rentner, Straus Miller, William Bass, Bender-Hamburger, Herman

Beispiel, Eisenberg Sons & Company, Mary Lee, Rudolph, Nettie Rosenstein. There were many others also used for—

Q. Among the others would you mention Civite? A. I used Civite.

Q. Capri Frocks? A. We used Capri.

Q. Joseph Halpert? A. We used Joseph Halpert.

Q. You mentioned Bender-Hamburger? A. We used Bender-Hamburger.

Q. Did you mention Rudolph Gowns? A. I mentioned it, I called it Rudolph, but it is the same; Rudolph Gowns.

Q. Did you mention Straus Miller? A. Yes, I mentioned Straus Miller.

Q. Did you mention Milton Altmark? A. No, I did not mention him. Again, he is a more important resource in the next lower-priced division.

Q. But you did buy from him? A. I bought some from him.

Q. All right, A. Department 334, which is our middle grade dresses, in women's sizes, used in the spring of 1935, 44.8 per cent. of its purchases from Guild resources. Our leading resources, there were Dolces Dress, Joseph Ginsberg, Grossman-Ginsberg, and we also used a number of other resources.

Q. Among those others were Henry Gans, Incorporated? A. Yes.

Q. La Rue Dresses, Incorporated? A. Right.

Q. Frank-Starr Friedlander? A. Yes.

Q. A. Goodman, Incorporated? A. Yes.

Q. All right. A. Department 354, which is our medium grade dresses, retailing from \$25 to \$29.75, misses' sizes, used in the spring of 1935, 60.2 per cent. of Guild manufactured merchandise. \$25 is the more readily got price but we considered \$29.50.

Q. What is the department number and the per cent.? A. Department 354, and the per cent. of Guild merchandise used was 60.2.

8944

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Mr. Albert: 60?

Mr. Haycraft: 60.

The Witness: 60.2. Our chief resources there were Milton Altmark, Milton Bass, Bender-Hamburger, Capri, Casino, Fiegenbaum & Adelson, A. Goodman.

Q. A. Goodman, did you say? A. A. Goodman, Mary Lee, Starr-Friedlander, but we also used other Guild houses.

Q. Included in your other Guild houses were Eisenberg & Sons? A. Right.

8945

Q. Joseph Halpert? A. Yes.

Q. Kane-Weill? A. Yes.

Q. J. M. Silverman-Levy? A. Yes.

Q. Paul Parnes? A. Paul Parnes.

Q. That is all; proceed. A. In Department 338, budget dresses retailing from 7.95 to 22.95 in women's sizes, we used 13.5 per cent. Guild merchandise in our spring merchandise purchases.

Mr. Albert: That is Department 338?

The Witness: 338, 13.5 per cent. Our chief resources were Rosen Brothers, Barnett-Ginsburg-Adelson, but we bought from other Guild houses as well.

8946

Q. Did you include in the other Guild houses the International Dress? A. I presume we bought a few things in women's sizes. I do not recollect. They are considered to be mostly a misses' and junior line.

Q. Little Brothers, Incorporated? A. Yes.

Q. C. H. D. Robbins & Company? A. Yes, substantially.

Q. That is all. You may proceed. A. In Department 358, in the spring of 1935, 358 being the misses' budget dress division, selling dresses \$7.95 to \$22.95, I regret

that I have again omitted the percentage of purchases from Guild houses, which I will obtain at noon. Our chief resources there were Whitman-Snyder, Aywon Dress, Daytime Dresses and International Dress, but we bought many dresses from other Guild houses as well.

Q. Of the four that you have named, which would you say was the principal one? A. Whitman-Snyder.

Q. Did you buy from B. and G. Garment Company? A. Yes.

Q. Fed Dress? A. Yes.

Q. Gilbert Dress Company? A. Yes.

Q. C. H. D. Robbins? A. I do not recollect. It is possible that is so. In that department. He again is generally considered to be a women's resource.

8948

Q. All right. Proceed. A. Department 371, Junior Coats, Suits, Dresses and Sports Wear, bought in the spring season of 1935, 14.8 per cent. of Guild merchandise from Guild resources, and the chief resources there were Bonray, Ben Ginsberg, Joan Junior, Will Steinman, David Westheim, Junior Guild and Mulligan. Mulligan started—they got going under the name of Mulligan, Incorporated, late in the spring, and some purchases came in June and July—

Q. That is Louise Mulligan? A. That is the same Louise Mulligan that was such a large resource in the fall of '35.

Mr. Albert: Did you mention them in the fall of 1935 or were you going to say that is the same resource that was mentioned in Chicago?

8949

Mr. Haycraft: He mentioned it.

The Witness: I think I mentioned it, Mr. Albert.

Mr. Albert: I wasn't sure, Mr. Donovan. I just wanted to know.

The Witness: It is the same concern. Department 380—

8950

*Dayne Donovan—For Commission—Direct.**By Mr. Haycraft.*

Q. Just a moment. I want to ask you a question about 371. A. Yes.

Q. Did you buy from any other Guild resources than those you have named? A. Yes, we did.

Q. Did you buy any from Arkkay Junior Frocks? A. Yes, we did.

Q. Ashley Frocks? A. Ashley?

Q. Yes. A. Yes.

Q. Gilbert Dresses, Incorporated? A. Yes, sir.

Q. International? A. Yes.

Q. Junior League? A. Yes.

8951

Q. Nathanson and Beck? A. Yes.

Q. That is all. A. Department 380, handling sport dresses, again I have no figure as to the actual amount bought of Guild resources. It is not particularly large, however. Our chief resources were Star-Maid—

Mr. Albert: You mean that you omitted to put down the figures or that it is so insignificant that you didn't put it down?

The Witness: No. I omitted to put it down. I have no notation of any kind. I put this down rather hastily and I apparently forgot one of two departments. We bought from other resources aside from these two, however.

8952 *By Mr. Haycraft.*

Q. Did you buy any from David Crystal? A. We bought from Crystal, yes.

Q. William Bass? A. Pardon me. I did not get the name.

Q. William Bass? A. Yes.

Q. David Goodstein? A. Yes.

Q. Campus Modes? A. Yes.

Q. Kane-Weil? A. Yes.

Q. Townley Frocks? A. Townley?

Q. Townley. A. Townley? Yes.

Q. Yes. Rubinger Sportswear? A. Rubinger?

Q. Yes. A. We bought from them. I am not—however, that is knitted apparel. Rubycraft.

Q. Knitted apparel? A. I believe it is. I know we bought from Rubycraft.

Mr. Albert: Now, if it please the Court, may I ask that the list from which Mr. Donovan has been reading and the list from which Mr. Haycraft has been prompting the witness be marked for identification?

Examiner Bennett: Mr. Donovan's list—

Mr. Haycraft: That is a rather peculiar request, Mr. Examiner.

Examiner Bennett: Mr. Donovan's list will be available for cross-examination, and the list that the attorney is using, I have nothing to do with. They are his notes, his private notes, and I am not going to pay any attention to that request.

By Mr. Haycraft.

Q. Have you completed your testimony, Mr. Donovan?

A. Yes, I have.

Q. Now, included in your resources of Guild houses, in the year 1935, were there any what is known as confined lines; that is, lines that were confined to the Dayton Store in this territory? A. There were some. Did you ask in the spring or fall, or does it make any difference?

Q. Either one. A. There were some. I can think of three offhand that were confined to us in this territory.

Q. What ones were they? A. Louise Mulligan confined his or her products to the Dayton Company in Minneapolis. Grace Ashley of St. Louis confined the par-

8956

Dayne Donovan—For Commission—Direct.

tiacular dress which she was making to us in Minneapolis, and Star-Maid confined a sports dress which they were making to us in Minneapolis.

Q. Were there any trade names used by these manufacturers that were featured by the Dayton Company? A. Well, the Mulligan dresses were featured as "Mulligan Dresses" and sold under that name, promoted and advertised under that name. And we are having numerous requests to-day under that name.

8957

Q. What about Grace Ashley? A. I am not so certain whether they were promoted as "Grace Ashley" dresses in the newspapers. I am trying to think whether the dress bore the label "Ashley Dress." I am not clear. We promoted them as "Grace Ashley Sports Dresses," sold them as such.

Q. What about the Star-Maid? A. Star-Maid had a line using the name of a famous English shirt maker, "Kay Wragge," W-r-a-g-g-e, which name they confined to us, and by which we referred to these dresses in our advertising and in our promotion.

8958

Q. Now, was there any other manufacturer, member of the Guild, resource of the Dayton Company, that sold a line of dresses that were featured or promoted by the Dayton Company as such? A. Well, Maurice Rentner confined to us the promotion and the dresses covered by his booklet, "Quality Street," which we issued or mailed out through our own store and which I believe falls in the classification you are inquiring about.

Q. Was the sale of "Quality Street" confined to Dayton's in this territory? A. In the fall, yes, it was.

Q. In the fall? A. "Quality Street" dresses in the booklet, and the booklet itself was given to us for our use and confined to us.

Q. Were there any others?

Mr. Albert: May I interrupt just a moment, your Honor, and ask the witness to bring that booklet this afternoon?

Dayne Donovan—For Commission—Direct.

8959

Mr. Haycraft: Will you do that?

The Witness: Very well. Yes, I will.

By Mr. Haycraft.

Q. Were there any others that you can recall now? A. I believe that there were one or two more, but I frankly can't recall them. I think they probably were of lesser importance than these. For instance, Kane-Weil had a "Dress of the Month" promotion in which I believe we participated. I think those dresses were confined to us. I think there were one or two other instances like that.

Q. Did any of the members of the Guild who were resources of the Dayton Company engage in advertising in ladies' fashion magazines or other magazines read by women featuring their lines of dresses, where the Dayton Company was mentioned as a place where the dresses might be found? A. Well, we participated in some of those propositions. There are a number of them. We, for instance, participated in a promotion organized by the fashion editor of "Good Housekeeping" magazine, in which merchandise was selected by their fashion editor and by a group of stores in various—from various manufacturers.

8960

Q. Do you recall the names of manufacturers that were featured in this advertising? A. Well, Grosman-Spiegel, I think was one.

Q. When was that? A. Well, it was toward either December of last year or March of 1936. As I recall it, they came out at about three-month intervals.

8961

Q. Any others? A. Ben Ginsberg was in one, at least; and Junior League, I am sure was in one; and there were others. Occasionally they were not Guild but for the most part they were Guild.

Q. See if this will refresh your recollection as to the Guild houses who co-operated with the "Good Housekeep-

8962

Dayne Donovan—For Commission—Direct.

ing" magazine and the Dayton Store (indicating a copy of "Good Housekeeping" magazine). A. Yes, it does.

Q. When was that? A. This is in the March, 1936, "Good Housekeeping" magazine.

Q. What Guild resources? A. The Guild resources used here were Grosman-Spiegel, Junior Moderns, Ben Ginsberg, Rentner, Miller, Joan Junior. That is all. Ben Ginsberg has two garments in here.

Q. Was there any advantage to such co-operative promotional advertising to the Dayton Company? A. Yes. We believe it was an advantage in the ones which we went into.

8963

Q. In what way? A. We believe it promotes sales, principally, promotes prestige, helps our reputation.

Q. Did you enter into any co-operative promotional advertising with any other magazines other than "Good Housekeeping" from 1935 or in early 1936? A. Yes. We have at times gone in on other of these group propositions. I believe we have been in one or two "Harper's Bazaar" promotions. I believe we would have gone into one this spring had we had access to Guild lines, and we would have gone into one this fall had we had access to Guild lines.

Mr. Haycraft: Mark these.

(The papers referred to were marked Commission's Exhibits 708, 709, 710, 711 and 712 for Identification.)

8964

By Mr. Haycraft.

Q. I show you Commission's Exhibits Nos. 708, 709, 710, 711 and 712, and ask if you can identify those? A. Well, these cover—they are communications addressed by various Guild houses to a member of our organization in which they indicate that the cause of Guild restrictions—

Dayne Donovan—For Commission—Direct.

8965

Mr. Albert: If it please the Court, may I ask that the substance of those documents be not described until they are offered in evidence?

Mr. Haycraft.

Q. Will you describe each of those exhibits as to who they are from and to and the date? A. Commission's Exhibit No. 708—

Q. For Identification. A. Is from Maurice Rentner, dated February 21, 1936, to The Dayton Company. Is that all?

Q. Take the next one. A. The communication from Grace Ashley of St. Louis, dated August 29, 1936, to Mrs. McKenney of The Dayton Company. 8966

Q. That is Exhibit No. 712 that he just read.

Examiner Bennett: Seven hundred what?

The Witness: 712.

Mr. Haycraft: Strike that out.

Mr. Haycraft.

Q. Let's take it up in order, if you don't mind. Take the next. A. 709, a letter from Milton Altmark, dated February 18, 1936, to The Dayton Company.

Q. 710? A. 710, a letter from our New York office to dated February 18, 1936, to Miss Johnston of The Dayton Company.

Q. 711? A. 711, a letter from Fred A. Block, dated August 27th, 1936, to The Dayton Company, Minneapolis, Minnesota. 8967

Q. 712? A. I did identify—oh, excuse me. 712, a letter from Grace Ashley of St. Louis, dated August 29th, 1936, to Miss F. McKinney.

Q. I show you Commission's Exhibit No. 710 again. Who is R. E. Friedland? A. He is an employee in our Press Division at our New York office.

8968

Dayne Donovan—For Commission—Direct.

Q. All right.

Mr. Albert: By "your New York office" do you mean the A.M.C. office?

The Witness: The A.M.C. office.

By Mr. Haycraft.

Q. To what Guild manufacturers does this letter refer?

A. It refers to Mary Lee.

Mr. Haycraft: I offer these letters in evidence.

(The paper writings referred to were handed to Mr. Albert.)

8969

Mr. Haycraft: Mr. Examiner, the hour of 12.30 is approaching. I have a luncheon engagement. I would appreciate it very much if we could take a recess at this time.

Examiner Bennett: All right. We will take an adjournment until 2 o'clock.

(Whereupon at 12.25 o'clock P. M. the hearing in the above-entitled matter was adjourned until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

8970

Examiner Bennett: There was an offer pending of several exhibits, 708 to 712, inclusive.

Mr. Albert: That is right.

Examiner Bennett: And they were being read by the respondent's attorney.

Mr. Albert: With respect to Commission's offer of Commission's Exhibits 708, 709, 710, 711 and 712, the offer into evidence of these exhibits is objected to on the ground that they are in no manner

binding upon the respondent F.O.G.A., no proper foundation or proof has been laid of the authority of the signers of these letters to so sign them on behalf of the companies allegedly having mailed the letter, and no proper proof or explanation has been made of the substance thereof to make them at all intelligible.

Examiner Bennett: The objection is overruled, and the documents are received as Commission's Exhibits 708 to 712, inclusive.

Mr. Albert: Exception.

(Thereupon the documents heretofore marked for identification Commission's Exhibits 708, 709, 710, 711 and 712 were received in evidence.)

By Mr. Haycraft.

Q. At the time Dayton's were red carded, which you say was about February 17th, 1936, did they have any orders outstanding with any of the manufacturers that you have mentioned here as resources? A. Yes.

Q. Can you testify as to the names of the resources with whom Dayton's had outstanding orders at the time of the red carding? A. I can testify accurately if I have a list, I can testify accurately, or I can testify from memory if that serves, but a good many of them.

Q. Testify from memory, if you will. A. We had outstanding orders with Philip Mangone, Mary Lee, Milton Altmarm, Maurice Rentner—

Q. Wait a minute now. A. The Star Maid, Louise Mulligan, with Herman Beispiet, Kondazian, Pappas. Those come particularly to my mind. I know there were a good many more, more than that.

Q. Can you refresh your recollection from this paper (handing paper writing to the witness)? A. Yes, those were the resources.

8974

Dayne Donovan—For Commission—Direct.

Q. Will you testify, having refreshed your recollection as to what resources you had orders with at the time of the red carding? A. Yes, Philip Mangone—

Mr. Albert: If it please the Court, if the witness is going to read that exhibit, I ask it be offered in evidence, and a proper foundation laid for it. He is not refreshing his memory; he is reading it.

Examiner Bennett: Did you have anything to do with the preparation of that document?

The Witness: Yes, sir.

By Examiner Bennett.

8975

Q. You had it prepared for you? A. No, I prepared this myself.

Q. You prepared it yourself? A. Yes.

Q. Does this refresh your recollection? A. It does.

Examiner Bennett: All right, go ahead and read from it.

The Witness: Philip Mangone, Carmel, Grossman-Spiegel, Friedman Dress, A. Trainor, Suttre Fox, Herman Beispiel, Jennie Moscowitz, Grossman Greenberg, Dolces, Baran Dress, Maurice Kentner, Davidow, Mary Lee, Rudolph, Milton Altmark, Kandazean Pappas, Eisenberg, William Bass, Hume Gold, Virginia Hume Gold, Ben Ginsburg, Mulligan, Incorporated, Junior Guild, Adler & Adler, Sam Steinberg, Star Maid.

8976

By Examiner Bennett.

Q. Do you know that to be a correct list? A. The names I have down here positively are correct because I prepared them from orders which were outstanding, but there may be one or two that are not down here.

Q. That is correct so far as it goes? A. It is correct so far as it goes and it goes at least 98 per cent. of the way.

By Mr. Haycraft.

Q. Were those orders filled? A. Most of those orders were filled.

Q. Was any attempt made to re-order from the manufacturers you have named? A. Yes, there were one or two attempts made.

Q. With what success? A. The re-orders were not filled.

Q. Did your buyers make any attempt since February, 1936, to obtain merchandise from these manufacturers? A. Yes, we made some definite attempts to obtain merchandise from some of these manufacturers and we have frequently visited showrooms, hoping that they would offer to sell us, which they did not and we have gone so far as to write at times to make sure that they still would not sell us, having heard in a few cases they might have dropped out of the Guild, and we have kept generally in rather constant touch with these men. 8978

Q. Have you ever been able, since February, 1936, to place an order with any of the members of the Guild with whom you had been dealing? A. We have succeeded in obtaining a very little merchandise.

Q. What percentage of your usual requirements of Guild merchandise have you been able to get since February, 1936? 8979

Mr. Albert: That is objected to, if the Court please. I do not think there is any.

Examiner Bennett: Well, if you have any knowledge of that situation. Have you any knowledge of that situation?

The Witness: May I ask if I understand the question correctly? Since we were red carded on

8980

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new orders, what percentage of our requirements have we been able to get from Guild houses?

Mr. Haycraft: That you had been formerly getting from Guild houses, your Guild requirements.

The Witness: That is on new orders, since the red card boycott.

By Mr. Haycraft.

Q. Yes. A. 3 per cent., at a guess.

Mr. Feldman: Is that a guess?

The Witness: Yes, I believe it is a guess. I have made no study at all of it.

8981

By Mr. Haycraft.

Q. Now, Mr. Donovan, do you have an opinion as to the effect of the inability of the Dayton Company to obtain merchandise from Guild houses that you had been purchasing from before you were red carded upon the business of the Dayton Company, that is under your supervision?

Mr. Albert: That is objected to, if it please the Court, as immaterial and irrelevant, no foundation has been laid for the source of his knowledge.

Examiner Bennett: You are answering the question: "Have you an opinion?" You may answer. Overruled.

8982

The Witness: I have an opinion.

By Mr. Haycraft.

Q. Will you state what your opinion is?

Mr. Albert: I press my previous objection, if it please the Court, no foundation has been made as to the basis of the opinion upon which it is predicated.

Examiner Bennett: The foundation has been laid in the description of his job with the Dayton Company, I imagine. I will overrule the objection.

Mr. Albert: Exception.

Examiner Bennett: Will you give your opinion, whatever it may be?

The Witness: My opinion is that the failure to obtain merchandise from Guild houses during the spring season has had a very adverse effect on our business since the date of the red card boycott, and that that effect will be even more marked this fall.

Mr. Albert: I ask the latter part of the answer be stricken out as not responsive to the question. The question is: "What effect did it have?"

8984

Examiner Bennett: I will let it stand.

Mr. Albert: Exception.

By Mr. Haycraft.

Q. In what way, Mr. Donovan, has it had an adverse effect upon the business of the Dayton Company under your supervision as to the spring period? A. We lost volume. By that, I mean sales, and the consequent gross profit on those sales. It has had a damaging effect on our reputation in the city of Minneapolis and has made us less competitive. We have been forced to disappoint many customers for special orders, special merchandise, which we had been in the habit of carrying and that they could no longer find in our stock. We have been to extra expense in the matter of trying to locate new resources, both expenses in actual traveling time and by our salaries. We have taken extra losses on markdowns, due to experimenting with totally new lines and endeavoring to replace, unsuccessfully for the most part, some of the Guild lines. Those come to my mind immediately.

8985

8986

Dayne Donovan—For Commission—Direct.

Q. In your opinion has it had any effect on the investment you had in consigned branded lines? A. I am sorry, I did not understand that.

Examiner Bennett: Give us the question.

Q. (Question read.) A. Yes, it has.

By Mr. Haycraft.

8987

Q. Now, taking up the first item that you mentioned, will you explain to us in what way and to what extent your inability to obtain merchandise from Guild resources has affected your volume of sales and gross profit? A. We bought many kinds of merchandise from Guild manufacturers, which we have not been able to replace and hence, naturally, we lost the amount of the sales that those Guild houses would represent to us, and we have been forced to turn away customers who asked for specific items, which we could no longer have, and that represented loss of volume and gross profit.

8988

Q. Have you any figures in mind which show the extent of those losses? A. The only figures I could give you is that of our showing on the spring season, particularly in certain departments, where the Guild effect was so very disappointing, and since we have been making good showings before that time, and since other departments not affected made good showings, I am quite sure that the supposition would be that we lost because we could not have these lines.

Q. What departments do you have in mind? A. In our women's departments, women's better dresses.

Q. What number? A. 333 and 338. The loss there was, I believe, unnecessary or would be unnecessary had we had access to the Guild lines, the loss in the junior department would be unnecessary had we had Guild lines.

Q. Junior department, what is the number of it? A. 371.

Dayne Donovan—For Commission—Direct.

8989

Q. Is that the sub-deb department? A. That is right.

Q. I show you Commission's Exhibit 713 and ask you to identify that. A. Yes; that is a table that I prepared.

Q. What does it refer to? A. It represents units sold in junior dresses at 12.95 up to 22.95 for the spring of 1935 and spring of 1936.

Q. What months did you include? A. March, April, May and June.

Q. Did you break down the price lines? A. I did.

Q. What price lines have you shown here? A. 12.95 and 13.95 in one price list, and 14 and \$15 in one price list, 17.95, 19.95 and 22.95.

Q. What was the source of information used by you in the preparation of this exhibit? A. Records which we keep in my office of sales by units.

8990

Q. Is this a correct statement of those records or taken from those records? A. It is as correct as records can be, yet there might be an occasional error of one, possibly, perhaps. They are our ordinary records that we use for our information right along.

Mr. Haycraft: I offer this exhibit in evidence.

Examiner Bennett: Let me see—

Mr. Albert: Objected to, if it please the Court, on the ground no proper foundation has been laid.

Examiner Bennett: Let us see the document, please.

(Thereupon paper writing was handed to the Examiner.)

8991

Examiner Bennett: Is this compilation from records which are kept in the ordinary course of your business and relied upon as correct in your business?

The Witness: Yes, sir, they are.

Examiner Bennett: Overruled. The document is received as Commission's Exhibit 713.

8992

Dayne Donovan—For Commission—Direct.

(Thereupon the document referred to, heretofore marked Commission's Exhibit 713 for Identification, was received in evidence.)

By Mr. Haycraft.

Q. Have you made any such comparison of any other department beside this? A. No, I have not.

Q. Have you made any study of any departments that you can testify as to the comparison of the sales of the spring season of 1935 as compared to 1936? A. Yes, I have made a study.

Q. What departments have you made such a study of?

8993 A. In the women's budget dresses.

Mr. Albert: What number is that?

The Witness: Number 338. Department 338. Women's better dresses.

By Mr. Haycraft.

Q. What was the result of that study? What did you find? A. I found that we had lost sales in volume due to the imposition of the red card boycott.

Q. To what extent did those losses go? A. I don't collect precisely at the moment. They run to—

Mr. Albert: Now, if it please the Court, if you don't recollect precisely, I don't think the Commission wants any guess.

8994

Examiner Bennett: If you don't recall it approximately, don't try to guess at it.

The Witness: Did you ask me if I could?

Examiner Bennett: I say, if you don't recall approximately do not try to give the figures.

The Witness: I recall it approximately.

Examiner Bennett: All right. You may give an approximate figure.

The Witness: 338, lost approximately 15 per cent.; 352 lost more than 25 per cent.

By Mr. Haycraft.

Q. That is, the whole price range? A. The department as a whole.

Q. The department as a whole? A. The department as a whole.

Q. Now, in your opinion, which departments were affected most from the volume standpoint?

Mr. Albert: That is objected to as calling for a conclusion of the witness and no foundation laid.

Examiner Bennett: What is the question?

(The question was read.)

Examiner Bennett: I will let you answer, if you know.

The Witness: I know.

Examiner Bennett: All right.

The Witness: Departments 333, 338, 353, 354, 371, 380.

By Mr. Haycraft.

Q. I believe you said that due to your inability to replace the Guild resources you suffered losses. I will ask you whether or not you can testify as to the resources, the Guild resources of Department 333, that you were unable to replace? A. I can testify as to that.

Q. Will you please do so? A. May I refer to a list of resources that I gave you before, or may I not?

Q. You may. A. I think I have such a list in my pocket. Department 333, we found it impossible to replace A. Traina and Mathew Kadetsky, Edgar Garick and Herman Beispel. Those four were among the most difficult to replace and there were certain characteristics in other manufacturers that we had missed and would have liked to have had.

8998

Dayne Donovan—For Commission—Direct.

Q. Which are those? A. Gardner-Schwartz, for instance, Joseph Greenberg. We just couldn't get anybody to replace A. Traina, Kadetsky, Beisgal.

Q. How about Department 334? Were there any resources in Department 334 that you were unable to replace? A. Yes. Dolces Dresses.

8999

Mr. Albert: Now, if it please the Court, I haven't objected very strenuously to Mr. Haycraft leading the witness. Now, the witness has read six departments which he claims were most affected by the Guild program, and his inability, alleged inability to obtain merchandise. Now, in an obvious attempt to lead the witness, Mr. Haycraft has now inserted another department which the witness has not testified to, and I will ask the Commission to admonish Mr. Haycraft not to lead the witness.

Examiner Bennett: All right. Is there a pending question?

(The record was read.)

Examiner Bennett: Overruled. You may finish your answer.

Mr. Albert: Exception.

The Witness: I have finished, your Honor. Dolces Dresses.

Examiner Bennett: All right.

9000

By Mr. Haycraft.

Q. Dolces Dresses was the only one in that department, in your judgment? A. I say, it is the most important, the one most difficult to replace. I think I have testified earlier that most of the Guild lines we buy because we think they are the best there is, and obviously some are hard to replace, but these were particularly a vital point in our assortment structure where we needed merchandise.

Q. All right. What is the situation in Department 338?

A. The line we missed most of all there was Rosen Brothers, and we could not replace Rosen Brothers, Barnett-Ginsberg-Adelson was very difficult to replace also. The others in lesser degree.

Q. Department 353? A. The most difficult ones to replace there, and the ones we could not replace were Maurice Rentner, Strauss-Miller, William Bass, Herman Beispiel, Isenberg, Mary Lee, and I believe I would add Rudolph.

Q. What about Department 354? A. The resources that was—merchandise—the lack of whose merchandise hurt us the most was Milton Altmark, but close in line with him was Capri, Mary Lee, Stair, Friedlander and William Bass.

9002

Q. How about Joseph Halpert? A. Halpert.

Q. Did you replace his merchandise? A. Well, I am not so clear on that point. I do not think that he was totally replaced, but I think we came closer to getting replacements on Halpert than one or two others. Dolces was extremely hard to replace.

Q. Who was the buyer for that department? A. Buyer for the department?

Q. Yes. A. 354?

Q. Yes. A. Mrs. Johnstone, Nellie D. Johnstone.

Q. All right. What is the situation in Department 371?

A. The resource there which we could not replace, resources which we could not replace were Mulligan, which was probably the most severe loss on the whole floor; Ben Ginsberg, who made an extremely saleable line of suits, junior suits and coats; Will Steinman; David Westheim; Junior Guild. I might add, if there is no objection that this department had an extremely hard time replacing many of its resources and suffered severely in sales because practically everybody we used was a Guild manufacturer.

9003

9004

Dayne Donovan—For Commission—Direct.

Mr. Albert: What department was that?

The Witness: 371.

By Mr. Haycraft.

Q. That is, in the dress end of it; is that what you mean? A. I should say in the dresses and primarily dresses costing \$10.75 or better. There was practically no resource left to us after the Guild had been closed to us.

Q. What is the situation in Department 380? A. We could not replace Star-Maid dresses, and so far as comparing with 1935 is concerned, that is the only resources which I would say we had extreme difficulty in replacing, although we had developed in the fall of '35 business with Sam Steinberg and one or two others that we could not carry along with.

9005

Q. Was Grace Ashley in that department? A. She is.

Q. Were you able to replace her? A. Positively not. I wish we could.

Q. Will you explain how the inability to get Guild merchandise after February, 1936, as a result of the red carding of Dayton's by the Guild affected adversely the prestige and reputation of Dayton's in Minneapolis? A. Many customers came to us requiring merchandise of the quality and type which they had before, which we were unable to supply, and as any retailer will tell you, if you are not able to care for women's departments along certain items of dress you lose business, probably maybe permanently from her, and you lose it in the allied departments as well as in the actual department in which she is interested. Also failure to have what we consider to be the best merchandise rather lowered I would say the morale in the better dresses. They discovered pretty soon that we were not using the kind of business we had before, and I feel that hurt our reputation and prestige. We were compelled to drop certain national lines that we had

9006

built up very heavily, and I believe that the dropping of these lines, the failure to continue through on them, hurt our reputation and prestige in the city.

Q: What lines do you have in mind? A. Well, I mean discontinuing the advertising on Mulligan, Star-Maid, I should say Wragge dresses, excuse me. And one or two other lines which we had been promoting. I should imagine it would damage our prestige. Customers ask why, and they will ask for the garments and you haven't got them.

Q. Have you actually received such a request from a customer? A. We are receiving requests for Mulligan dresses every single day. We have received requests for all of the others. At times, some of them almost continuously.

Q. In what way has this inability to get the dresses that you described affected your competitor situation. Has it made it less competitive? What do you mean by that?

Mr. Albert: I object to it, if it please the Court, no foundation having been laid.

Examiner Bennett: What is that question?

(The question was read.)

Examiner Bennett: Do you understand the question?

The Witness: Yes, sir.

Examiner Bennett: All right. You may answer. Overruled.

The Witness: Well, I believe that Dayton's was doing its fair proportion of the better dress business in Minneapolis up to the time we were shut off, and naturally you can't abandon certain manufacturers who are admittedly among the best, perhaps the best in the industry and not sacrifice something in the way of competitive standing in the city. Our competitors naturally are buying these resources. I have seen a statement to the

9010

Dayne Donovan—For Commission—Direct.

effect that the Guild manufacturers had replaced all the business they had lost with red carded accounts. Hence, I presume they are selling more of this merchandise to our competitors in the city. I feel that we have—or it has become known to the public that our dresses are not of the grade that they used to be, that our competitors are perhaps selling more of these other types of dresses, and hence our competitive standing has gone down.

9011

Q. Now, you mentioned among the effects of the red carding, disappointed customers on particular items. Do you have any concrete illustrations of that? A. Following the red card boycott a number of special orders were refused and those special customers were of course disappointed. It has been furthermore, a habit for customers to come into our model shop—that is the better dress shop, the highest priced end—with a copy of "Vogue," "Harper's," and say, "Can you get me this garment," or "Can you get that one?" and we could always or nearly always get it for them. Now, when they come in with those magazines we try to get their minds on something else knowing that we can't get those garments in all probability. Customers have asked if we carry certain dresses by name. A few customers are familiar with Maurice Rentner's line, ask for it, and we tell her that we no longer have it. Some have inquired about his "Quality Street" dresses this fall and we have been compelled to say that so far we have bought none. As I mentioned before, the effect of Mulligan's, they have inquired for them. Many women to whom we sold the Wragge dresses made by Star-Maid last spring desired other dresses by the same maker or a duplicate of what they had last spring, and we were unable to furnish them.

9012

Mr. Haycraft: Mark this the next exhibit.

(The paper referred to was marked Commission's Exhibit 714 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 714 and ask you if you can identify that? A. I can.

Q. What is it? A. It is a record of our estimated loss and travel expense and time, exclusive of buyers' salaries, made necessary by the red card boycott last spring.

Q. Who prepared it? A. I furnished the material for it from my records.

Q. Who compiled it? Was it compiled under your supervision? A. It was compiled under my direct supervision.

Q. Was it compiled in the ordinary course of your business? A. It was.

Q. Are you satisfied that it is approximately correct? A. I am satisfied that, if anything, it is an under-statement of the facts.

Mr. Haycraft: I offer the exhibit in evidence.

Mr. Albert: I suppose I should object, your Honor, on the ground that no proper foundation has been laid, but the exhibit is so amusing that I don't think I will object to it.

Examiner Bennett: May I see it?

(The paper writing referred to was handed to the Examiner.)

Examiner Bennett: Overruled. I will receive it.

Mr. Albert: Exception.

(The paper referred to, heretofore marked for identification Commission's Exhibit 714, was received in evidence.)

9016

*Dayne Donovan—For Commission—Direct.**By Mr. Haycraft.*

Q. What did you have in mind when you testified with respect to the loss of investments in confined, branded lines?

Mr. Albert: That is objected to, if it please the Court, on the ground that Mr. Haycraft is now on his redirect examination before we have started cross-examination. The witness has testified to it.

Examiner Bennett: I will sustain the objection, to the question in that form.

9017

By Mr. Haycraft.

Q. Can you give me an illustration of loss of investment in confined branded lines, referred to in your previous testimony?

Mr. Albert: Objected to upon the same ground, and upon the additional ground that no foundation has been laid.

Examiner Bennett: What is the question?
(The question was read.)

Examiner Bennett: You may do that. You may answer that. Overruled.

The Witness: I can answer it. We happen to have checked a while ago and we had invested in publicity of various kinds and types over a thousand dollars in Louise Mulligan, and we now consider that that investment is probably a loss to us, and not only that, but seems to be invested for the benefit of our competitors who now handle the line.

9018

Q. In what way was that one thousand dollars expended? What type of advertising? A. Partly in Fashion Shows, in popularizing the personality of Miss Mulligan, showing her garments directly worn on girls to

people who came into the store to see them, and partly through our Datonian, which is a quarterly publication of the same company and perhaps most of all the newspapers in promoting that line.

Q. Over what period of time? A. The figure I mentioned refers to the time elapsing between August 1st, 1935 and February 1st, 1936, a period of at least roughly of six months.

Q. Can you give any other illustration? A. We have in the promotion of Wragge dresses invested some money in the same manner, although I have no actual figures to quote. And in the promotion of Grace Ashley dresses we have also spent some money in the same way.

9020

Mr. Albert: Is that the corpus delicti, Mr. Haycraft (referring to large box)?

Mr. Haycraft: Is there something on the record that I didn't hear?

The Reporter: "Is that the corpus delicti, Mr. Haycraft?"

Mr. Haycraft: I think that is on the other side of the table. Mark this for identification.

(The document referred to was marked Commission's Exhibit 715 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 715 for Identification and ask you if you can identify that? A. That is the booklet which Maurice Rentner made up for us to send out to our select customers, in the fall of '35. They are his dresses in the booklet. 9021

Q. How many of those did you send out? A. I can only estimate that. I don't know it precisely.

Q. What is your estimate? A. My estimate is 3,000.

Q. To whom were they sent? A. Presumably customers on our list who buy high grade garments.

9022

Dayne Donoran—For Commission—Direct.

Q. And at what expense? A. I cannot testify.

Q. I notice in pencil figures on this exhibit, heavy black figures, "\$285.00." To what does that refer? A. I believe that refers to the cost of booklets to us plus the mailing. It is a swell book.

Mr. Haycraft: Mark this.

Mr. Albert: No objection, Mr. Haycraft.

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 715, was received in evidence.)

9023

(Thereupon a document was marked Commission's Exhibit 716 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 716 for Identification and ask you if you can identify that? A. That is a Dayton ad run in the "Journal," January 16th, 1936. Do you want me to give the contents, too?

Q. No, just what it refers to? A. Referring to a Fashion Show of Louise Mulligan dresses.

Q. There is a heavy pencil notation on it. What are those figures? A. The cost of the ad.

Q. Was that made under your supervision? A. No, sir.

Q. Did you have anything to do with it at all? Do you know whether or not the ad was issued? A. Do I know whether or not the—what?

9024

Q. This ad was actually issued? A. Yes, it was run.

Mr. Haycraft: I offer that in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The paper referred to, heretofore marked Commission's Exhibit 716 for Identification was received.)

Dayne Donovan—For Commission—Direct.

9025

By Mr. Haycraft.

Q. Now I will show you—

Mr. Haycraft: Mark this for identification.

(The paper referred to was marked Commission's Exhibit 717 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 717 for Identification—

Mr. Albert: Maybe there will be no objection, Mr. Haycraft, and we can save time—

9026

By Mr. Haycraft.

Q. (Continuing). —and ask you if you can identify that? A. I can.

Q. What is it? A. An ad on Louise Mulligan dresses run in "The Minneapolis Journal," August 21, 1935.

Mr. Haycraft: Offer it in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 717, was received in evidence.)

By Mr. Haycraft.

9027

Q. The pencil notations are the cost of the ad, also? A. They are.

(Thereupon a discussion ensued off the record.)

Examiner Bennett: They are received.

(The papers referred to, heretofore marked for identification Commission's Exhibits 718, 719, 720, 724, 725, 726, 727, 728, 729, 730, 731, 732 and 733, were received in evidence.)

9028

Dayne Donovan—For Commission—Direct.

Q. Now, Mr. Donovan, you referred to a situation in the fall buying season which began, I believe, the first of August, is that correct? A. That is correct.

Q. Have you been able to replace Guild merchandise which you had formerly purchased from Guild manufacturers?

Mr. Albert: Up to the present time, do you mean?

Mr. Haycraft: Up to the present time.

Mr. Albert: Yes.

The Witness: In a great many cases we have been unable to replace it at all, some places where we have partly replaced it.

9029

Q. Now, referring to your memoranda again, I will ask you to testify as to the instances where you have been unable to replace Guild merchandise for your fall requirements? A. We have—

Mr. Albert: Without conceding the truth, I will concede that the witness will testify substantially to the same effect.

Examiner Bennett: Did the other testimony apply only to spring purchases?

Mr. Albert: Yes, your Honor.

By Mr. Haycraft.

9030

Q. Well, I can ask this question: Have you been any more successful in replacing your Guild resources in your fall merchandise than you were in your spring? A. We have not been any more successful. In fact, since our fall season is more important, it is a larger season, I think I might say we have been a little less successful, certainly no more.

Examiner Bennett: When was—

By Mr. Haycraft.

Q. Could you list the outstanding resources of Guild merchandise which you have been unable to replace for your fall requirements? A. Yes.

Q. Please do so. A. Grossman-Spiegel, coats, Mangone, coats and suits, Friedman—maybe I better give them by departments. Would you rather have that?

Q. You better; it would be easier to follow. A. Department 300, suits.

Q. Just a moment, let me catch it. All right, go ahead. A. Suits, Mangone, in Department 300; Departments 310 and 320, Mangone, Grossman-Spiegel and Carmel Bros.; Department 332, J. L. Friedman Bros., or J. L. Friedman Company; Department 333, A. Trainor Company, Matthews Kadetsky, Ed Gerrick, Herman Beispiel; Department 353, which is the top of our misses' better dresses, Maurice Rentner, William Bass, Eisenberg Sons & Company, J. J. Rosenbergs, Herman Beispiel and Straus Miller; Department 334, Baran Dress Company, Dolces Dresses and Henry Gans; Department 354, Milton Altmark, William Bass, Charles Lang, Casino Dresses; Department 338, Rosen Bros. and C. D. Robbins; Department 358, Witlin Schneider, Aywon and International Dresses; Department 371, Mulligan, Incorporated, Ben Ginsberg, Junior Guild, Junior League and Bon Ray; Department 380, Sam Steinberg and Star Maid. 9032

Q. You were to get, at the noon recess, your percentage that Department 358 purchased from Guild resources. A. I have that. 9033

Q. What are they? A. Spring of 1935.

Q. All right. A. 24.4 per cent. of all purchases.

Mr. Albert: What department was that?

The Witness: In the spring of '35, in Department 358.

Mr. Albert: What are the figures?

9034

Dayne Donovan—For Commission—Direct:

The Witness: 24.4 per cent. of all purchases were from Guild houses, and in the fall of 1935 we purchased 32.3 per cent. of our total purchases from Guild houses.

Mr. Albert: What are the figures?

The Witness: 358, 32.3 per cent. In Department 380, in the spring of 1935, we purchased 11.1 per cent. of our merchandise from Guild resources.

By Mr. Haycraft.

Q. Is that spring or fall? A. That is the spring. The fall figure I have given you.

9035

Q. Oh, I see. That is all.

By Examiner Bennett.

Q. You started buying fall merchandise about July 15th? A. No, we start early, your Honor. We start about June 20th.

Q. About June 20th? A. Coat and suit lines and dress lines start about July 5th.

Q. And you start selling at the same time, do you? A. Well, we will sell a very little bit of fall merchandise in the latter end of July and more early August, and then it increases until at this time of the year, September, our selling is 96 per cent. fall merchandise, probably.

9036

Q. So the buying and selling have been going on from some time in June, about the 20th of June to the present time? A. Yes, sir.

Q. Under present conditions? A. Yes, sir.

Examiner Bennett: All right. Do you want to take a recess?

Mr. Albert: I think we might as well, your Honor, rather than starting and then interrupting the cross-examination.

Examiner Bennett: All right, we will take a recess of ten minutes.

(Thereupon a ten-minute recess was taken.)

Cross-examination by Mr. Albert.

Q. Now, Mr. Donovan, you have testified in various ways and in different language as to the necessity for the Dayton Store obtaining merchandise from Guild manufacturers. What, if you will, was it about that merchandise that was so necessary to the Dayton store? A. Well, on the whole, the merchandise from Guild houses contain more of the elements of saleability than merchandise from a similar number of non-Guild houses.

9038

Q. What are those elements? A. Well, I consider saleability in a garment first of all fit, whether or not it fits the woman in question; next, the composition of the dress in its various elements, in a manner that is pleasing to the customer, becoming to the average woman, and has eye appeal. Also, the ability to deliver, to manufacture and deliver promptly has something to do with its usefulness to us. Furthermore, Guild houses, as a rule, were among the first to have certain materials, certain trimmings, having the choice of the material in the trimming market, and these enter into the saleability of the dress. Their experience in manufacturing. Most of them have been in the manufacturing field for some time; experience in manufacturing, knowledge of the dress field, show up in the workmanship, in the details on the dress. I think that would be my answer, Mr. Albert.

9039

Q. Have you omitted any element? A. Would you read the answer back to me and I will see.

Q. (Answer read.) A. I think that is a complete answer, isn't it?

Q. I am not answering you. You are not trying to give the answers that will please me, are you, Mr. Donovan?

9040

Dayne Donovan—For Commission—Cross.

A. No. You asked if it was a complete answer. I do not know of anything more I can give you.

Q. That is all I wanted to know. In that answer, have you, by chance, in the description of one of the elements, used a word that is not commonly applied to that statement?

Mr. Haycraft: That is objected to, too indefinite and immaterial.

Examiner Bennett: Give me the question, please.

(Question read.)

9041

Examiner Bennett: Do you understand that question?

The Witness: Yes, sir.

Examiner Bennett: All right, you may answer.

The Witness: But I cannot answer, I do not know.

By Mr. Albert.

9042

Q. Well, now, don't you think; Mr. Donovan, it is rather unusual, with a divisional merchandise manager in the dress company for as long a time as you are, have been, in the description of the elements that you take into consideration in purchasing goods, which will sell to your customers, have not used the word "style" or "fashion"? A. I don't know whether it is unusual or not. It did not occur to me.

Q. Well, would you say that you have used that word or the term "style" or "fashion" in any of the words that you have used in describing the elements? A. I think it comes—

Q. Under eye appeal? A. Possibly.

Q. Is that what you mean? A. Possibly.

Q. Possibly. Does it come in under anything else? A. I mentioned the matter of composing the materials of the dress to present a pleasant picture.

Q. In other words, you have used everything except the word "style" or "fashion."

Mr. Haycraft: I object to that question.

Examiner Bennett: Read the question.

(Previous question read by the reporter.)

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

Q. Do any of your customers, when they do not like the looks of a dress, say it has no eye appeal to them, or do they say it hasn't any style? A. Well, they usually say it is not a style that they want.

Q. Did you ever hear any of them use the word "eye appeal"? A. No; very few at least. 9044

Q. Well, then, would you say that style is synonymous with your expression, with the word "eye appeal"? And is one of the elements that are considered by you in purchasing dresses that you think will sell in your store?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let him answer.

Mr. Haycraft: The witness has used language with which he is familiar and is accustomed to use.

Examiner Bennett: If he wants to add "style," if he thinks he has covered it, all right. I will let him answer. He is able to answer the questions.

Mr. Haycraft: Read the question.

(Question read.) 9045

The Witness: Well, I believe I covered the question fairly sincerely. I don't feel like changing my answer.

Q. Don't you think a dress can have eye appeal without having style? A. I believe it could.

Q. So that you have not covered style by the use of the word "eye appeal," if you can have eye appeal without

9046

Dayne Donovan—For Commission—Cross.

having style, have you? A. Would you mind repeating the question?

Q. (Question read.) A. Well, I presume you can have style without eye appeal.

By Mr. Albert.

Q. Well, then, you left out consideration of style as one of the elements that you consider? A. I believe I included the element of style such as I considered them in my original answer, Mr. Albert.

Q. Well— A. If you wish to know whether I intentionally left it out or not, I will answer.

9047 Q. Well, I think the record will reveal adequately whether you did or not. A. Very well.

Q. In consideration of the elements that you took into consideration, you mentioned first fit. Do you mean by that that that is the first one you happened to think of, or do you mean that that is the most important? A. According to my lights, Mr. Albert, I believe it is the most important.

Q. Fit? A. Fit. For this reason, if you wish me to explain, all right.

9048 Q. Yes, go ahead. A. I believe when a customer, any one comes into our store, the first thing we have to do is fit her. If we cannot fit her, we have lost a sale. We know it right to start with. We might have the most desirable fashions, styles, anything that you or I might care to put in, but if we cannot fit her, the sale is gone. Therefore, I put down the word "fit" as being the first requirement, and I believe the major requirement, and I believe the layout of the department stores, whereby they segregate the sizes and usually appoint buyers to buy certain sizes, and the character of the market, whereby manufacturers make certain sizes, and specialize on certain sizes, indicates that that is the first requirement of a dress.

Q. Mr. Donovan, you mean by the use of the word "fit," the ability to provide your customer with the proper size?

A. I do.

Q. Is that all you mean by fit? A. No. In ~~that~~ connection with what I meant after—

Q. So that, insofar as your description of the elements that go into your purchase of dresses, what you mean by fit is the ability to get the proper size? A. Well, I mean the ability to get the proper size and have it made to that size correctly. In other words, so that a 38 fits a 38 woman.

Q. In other words, what you mean is that, insofar as the size is concerned, it is to be able to fit a woman with a dress once she has selected the dress, is that not so? A. I would say the opposite. I would say we have to show her a dress she can wear in the correct size and made to her correct proportions before we have any chance to interest her in anything else.

Q. Is it your contention, then, that your customers come in and ask for a size 12 dress and put it on, see how it fits; and then start to look at the style of the dress? A. No, my contention is that they come in and ask for a size 12 dress and, if we have not a size 12, we lose the sale. Therefore, that seems to me to be the first requirement, to have size ranges.

Q. In other words, if you haven't got a size 12, you cannot sell it? A. Well, you have a chance, of course, to sell size 14.

Q. Dayton's would not sell a woman a size 14 if she only wore a size 12, would it? A. Well, is that an inquiry into our methods?

Q. Well, I want to find out what elements you take into consideration in selling a dress. A. Well, I am trying to tell you as far as I have gone.

Q. Has Dayton's tried to sell a size 14 to a size 12 woman? A. If she looked easy, a trifle large for a 12, we

might. Some of the manufacturers, not Guild, I suppose, would make a size 14 a little scanty.

Q. What is your contention with respect to the elements that are taken into consideration by your customers when they attempt to purchase a dress? A. I can name four or five things that I believe almost every woman considers in the purchase of a dress. Would that answer the question?

Q. Well, I think we all will concede, Mr. Donovan, that nobody will purchase something that does not fit. A. That is right.

Q. That nobody will purchase a sack cloth to wear—
9053 A. That is right.

Q. —is that correct? A. That is correct.

Q. And that when a woman buys a \$100 dress she wants the needle work to be good, is that correct? A. Mostly, they expect it. I have seen them buy it and not know whether they were getting good, bad or indifferent needle work.

Q. That is the next thing I was coming to. Does the average women know anything at all about the needle work on a dress? A. The average woman does, the average woman does.

Q. But many do not? A. There are some who do not.

Q. When a woman buys a better dress or an expensive dress she also likes to see that the workmanship is proper; isn't that so? A. Most of them do.

9054 Q. When a woman comes into your store, what is the first thing that she asks for with respect to a dress? A. "I wear a size 28, what can you show me in a dinner dress, an afternoon dress, a daytime dress."

Q. Is that all that she is interested in? A. At first.

Q. Well, naturally, she has got to tell you what her size is in order to get anything at all; isn't that so? A. Sure—well, no, not always. We can guess it the most of the time.

Q. Then you know the size without her telling it? A. What?

Q. Then you know it without her telling it? A. Frequently.

Q. How frequently can you tell it without her telling it to you? A. I don't know that. I haven't sold the dresses myself.

Q. Do you know it on the average? Do your buyers or your salesladies know it on the average? A. They can make a reasonably close guess, but the woman naturally will give her size.

Q. So that when a woman comes into your place to purchase a dress, does she by any strange circumstance or peculiar quirk of her own ask you anything about the style? A. After we show her the dresses and start showing them she will make inquiries as to whether she is interested in the one style more than another.

Q. When you show her the styles of the dresses, do you show her your left-overs from last year? A. Not unless we have reason to believe that she would be interested in buying them. We have to sell them to somebody.

Q. What are the elements that would lead you to believe that she was interested in last year's dresses? A. Well, she might indicate that she wanted a dress to wear around.

Q. After she first asked you for the size? A. No.

Q. Or before? A. It might be either one or the other. She might ask for the size first or say simply, "I need a dress to wear around. I wear a size forty. Have you got one like that?"

Q. You wouldn't show her last year's dress unless you first told her about it; would you? A. If she wanted to wear a dress around, we have several hundred we have got to sell to somebody.

Q. What happens when you show them last year's styles? A. What happens? Either they are bought or not bought; I don't know which always.

9058

Dayne Donovan—For Commission—Cross.

Q. Those last year's styles are purchased at a price, aren't they? A. Yes. You mean the manufacturer's price?

Q. When you show last year's styles to your customers, you sell them for less than you sold them last year; don't you? A. Why, at this time of year or any end of the season that we are showing last spring's merchandise, for the most part it is reduced, not always.

9059

Q. When you sell last year's styles to a woman, it is generally because that woman has come in to purchase a dress at a price, isn't that so, rather than to purchase the prevailing style? That woman wants a cover; she doesn't want the latest fad, mode, does she? A. I don't suppose she expects it if she wants a dress at a price which is last season's garment.

Q. When your customers come in who are not looking for dresses at a price, but who are looking for dresses that adequately reflect the trend of the day and dresses that they wouldn't be self-conscious being seen it, what do they ask for?

Mr. Haycraft: I object to that, Mr. Examiner. There has been no showing that there is any such creature.

Examiner Bennett: Read the question.

(The question was read.)

9060

Examiner Bennett: I think you had better not load your questions down with so many ifs and ands. If you will just ask him a direct question, I think that will be better.

Mr. Albert: Well, then, let's make it direct, Mr. Donovan.

By Mr. Albert.

Q. I think you have been following the hearings very closely and have been attending some of the hearings.

What is the most important thing to a woman in a dress?

A. Didn't I answer that before?

Examiner Bennett: Yes.

By Mr. Albert.

Q. Isn't the style of the dress more important than the fit? A. I think I testified to the contrary. I don't think it is.

Q. Is it your contention that a woman—by that we mean the average of your clientele who purchases better dresses, will purchase a dress that fits her despite the fact that it wouldn't possibly be in style? We are not talking about exceptional cases, Mr. Donovan. I want your honest opinion from your years in the industry what the most part of your clientele of women seek when they come in for a dress.

9062

Mr. Haycraft: Now, I object to that question. It is a little complicated. No one in the world can understand it. He starts out with an average and winds up with the most.

Examiner Bennett: Read the question, please. (The question was read.)

Mr. Haycraft: I think the question has already been answered.

Examiner Bennett: Do you understand the question?

The Witness: Why, I think I know what he is driving at.

Examiner Bennett: All right. Go ahead and answer it.

The Witness: But I think I have answered it.

Examiner Bennett: What?

The Witness: I believe I have answered that. If I may interject at this moment, I think, Mr.

9063

9064

Dayne Donovan—For Commission—Cross.

Albert, I can safely say and be perfectly frank to concede that style is a very important element in a dress, but I am willing to concede it is the most important element. I think that explains—

By Mr. Albert.

Q. Now, isn't it a fact that— A. —the position.

Q. Isn't it a fact, Mr. Donovan, that when a woman comes in for a dress, if she doesn't say so in so many words, "I want to see your latest styles," that your sales force will show her the latest style of a dress in the size that may fit her? A. Not necessarily.

9065

Q. Then you try to sell dresses that are not in the latest style? A. I don't believe I said that.

Q. What do you mean by "not necessarily"? A. Well, I mean that we have dresses running in style back anywhere from to-day's dress, received to-day, back three months, four months, and that we have those dresses for sale, and if they appear suitable to the woman who comes in and are her size, we show her those dresses regardless of whether they are to-day's styles or four months ago's styles. We make no distinction in our selling as to how old they are.

9066

Q. With that answer in mind, upon what do you base the reputation of the Dayton store? A. That we have a large proportion of styles that have come in to-day and up-to-date fashions, but we make no pretense of stating that we have nothing that was last week's or last month's left in stock, and it does have to be sold. And it is true in all stores, and we try to have as much as possible, as most stores do, of the new established merchandise.

Q. Who is it that consistently in your opinion, provided that new established merchandise insofar as style is concerned? A. Why, there is a large group of good manufacturers who provide that.

Q. Would you say that they were the Guild manufacturers? A. I think the Guild, among others, provide new merchandise and I would say that insofar as the Guild comprising the market in certain types in that proportion the Guild has the most new merchandise.

Q. By new merchandise you mean new style? A. Yes.

Mr. Albert: Will you mark this for identification, please?

Examiner Bennett: What are you marking for identification?

Mr. Albert: Two pages in the "Good Housekeeping Magazine," December of 1935 issue. Pages 72 and 73.

9068

(The pages referred to were marked Respondents' Exhibits 61-A and B for Identification.)

By Mr. Albert.

Q. Now, Mr. Donovan, I show you Respondents' Exhibits Nos. 61-A and B, being two pages from "Good Housekeeping" for December, 1935, containing illustration of designs for various dresses, and ask you what it is in these dresses that is emphasized? A. Well, the color is emphasized, the details as to neck line, waist line, and so on, in many of the dresses. In short, it is the youthfulness, the salability of the dresses that is demonstrated, the desirability of the dresses.

Q. You still seem to have an adverse prejudice to using the word style; haven't you? Would you say that the style of those dresses are in any way emphasized? A. In a general sense, yes, the style is.

9069

Q. What is there that is attractive about the illustration there other than the style of the dress? A. The colors are very attractive, and it demonstrates in a very striking way the youthfulness of the fashions which I think—

9070

Dayne Donovan—For Commission—Cross.

Q. Isn't the youthfulness of the fashion a result of the style or design of the dress, or do you mean by that that the illustrator has merely painted or etched, or whatever it is that he did there, a very young girl with youthful looks? A. Well, the illustrator has done that. I also mean that the dresses are of styles and of colors and of general designs that are very youthful and appealing to a younger person.

Q. Will you tell me if there is anything in that advertisement which in any way asks the customer to please come in and feel the material and see how good the material is?

9071

Mr. Haycraft: I object to that as irrelevant.

Examiner Bennett: Give me the question.

(The question was read.)

Examiner Bennett: I will let him answer if he sees anything like that.

The Witness: I think every ad implies that the customer may do that if she is interested in so doing.

By Mr. Albert.

Q. In other words, it is taken for granted, isn't it? A. To a large degree, although I do notice here it refers to celanese taffetas and other materials which might make a customer want to come in and see what they look like and feel them.

9072

Q. That is merely a description of the material of which the dress is made so that the customer can know exactly what it is; isn't it? A. Well, that is true.

Mr. Haycraft: I object to the use of the word "merely," Mr. Examiner, as argumentative.

The Witness: Well—

By Mr. Albert.

Q. Without the use of the word "merely," isn't that all it is?

Mr. Haycraft: I object to that "isn't that all it is." It is argumentative.

Examiner Bennett: I will let him answer if he can.

The Witness: Will you repeat the question without using the word "merely."

(The question was read as follows: "That is a description of the material of which the dress is made so that the customer can know exactly what it is; isn't it?") 9074

The Witness: Well, that is what most advertising is, a description so that they can—

By Mr. Albert.

Q. Of course. Of course. A. —so that they can be interested in it and come in and investigate farther. We hope they will, and lots of times they don't.

Q. Is there anything in that advertisement that says that those who read it, "please come in and try on our dresses and see how beautifully they fit and enjoy yourselves." A. No.

Mr. Haycraft: That is objected to. 9075

By Mr. Albert.

Q. As a matter of fact, isn't the only thing that a woman can see in that advertisement to prompt her to come into your store to buy a dress is the style of the dress? A. Well, no. I think she can see from this advertisement that they are junior fashions and that we are asking the juniors who read this ad to come in and look at our merchandise.

9676

Dayne Donovan—For Commission—Dress.

Q. All right. Isn't the only thing in that advertisement that will attract the juniors who read that advertisement to come into your store, the design and the style of that dress? A. I don't honestly think I can answer for the juniors. It will seem like to me—

Q. After your years of experience you can't tell me what it is that you try to play up to in your customers?

A. I can't say what they think about in reading that page.

Q. What purpose did you have in mind— A. We hoped—

9077

Q. —in letting your name be used in connection with that advertisement? A. We have the hope that they will be interested enough to come in and ask about these garments.

Q. And the only thing that is in there that you hope they will come into your store, is a result of the design and the style of the dress; isn't that so? A. Well, that is a very important element.

9078

Q. Well, now, what did you mean when you said that your customers came in with a copy of "Vogue" or "Harper's" and asked for those dresses? Do they know anything about the material in the dress, as to its quality or value, or do they know anything at all about the fit of those dresses from what is in those advertisements? A. Well, they—what I was referring to, Mr. Albert, was not this particular—I mean illustrated garments in "Vogue" or "Harper's" and don't know whether they know anything about the fit or not. I don't suppose they do.

Q. Is this type— A. It doesn't mean that we have sold the garment because they come in and ask for it. It does mean that they would be interested in seeing it and providing the fit is there and the material is suitable they might buy it.

Q. Isn't the only thing that attracted that type of customer who reads "Vogue" or "Harper's" or "Good Housekeeping" the style and design of the dress as illustrated in

those magazines? A. You are asking that the only thing that those customers are interested in is the style?

Q. I said, is the only thing that attracted those customers to your store, that impelled them to go to your store, as a result of seeing the advertisement in "Vogue" or "Harper's" or "Good Housekeeping," isn't that only thing the style or design of the dress, as reflected in those magazines? A. I would say it is an important element in it.

Q. Is there any other element that is contained in those advertisements to attract their attention? A. Why, I think there is descriptive matter there pertaining to materials that are in the pages directed to junior readers. I think any one of those that want to come in and see the new celanese taffeta, might not at all be interested in what the garment looked like. They want to see the taffeta and hope they get something else maybe.

Q. So in other words, you think the only thing that attracts your customers when they see an advertisement in "Good Housekeeping" is not the seven comely ladies in fashionable dresses, but rather the line or two of type in that advertisement that states that you have on sale a celanese dress? If that is so why don't you just put an ad in "Good Housekeeping," "Come in and see our celanese dresses"? A. I never said that that was so, Mr. Albert.

Q. What did you say was so?

Mr. Haycraft: I object to that. The record shows what he said.

Examiner Bennett: Sustained. Too indefinite.

By Mr. Albert.

Q. You have a piece goods department, Mr. Donovan?

A. Yes, sir, we have.

Q. Your customer can see celanese in your piece goods department; isn't that so? A. Certainly, that is open at all times within store hours.

9262

Dayne Donovan—For Commission—Cross.

Q. You mailed or distributed Commission's Exhibit No. 715 to your customers; did you not, Mr. Donovan? A. Yes, we did.

Q. And that went out as a publication of the Dayton Company; did it not? A. I believe it did. I don't know to what extent.

Q. The name of the Dayton Company stands behind everything that is stated in that; doesn't it? A. The Dayton Company is on there.

Q. The Dayton Company doesn't lend itself—

Mr. Haycraft: I object to that.

9263

The Witness: It is all right. I just wanted to be sure. I didn't remember all of this. But I understand what you mean. It is Dayton Company's publication to all intents and purposes.

By Mr. Albert.

Q. (Indicating) On Commission's Exhibit No. 715? A. That is true.

Q. The Dayton Company does not lend itself to any advertising or to any statements that are misleading; does it? I don't mean any wrong inference by that at all. I am merely trying to get information from you. A. We do not knowingly ever subscribe to statements or things which we think are misleading and false.

9264

Q. Naturally before you issue a document of this sort under the name of the Dayton Company and have the Dayton Company's name behind it, you examine the contents thereof in order to make sure that there is nothing in there that you wouldn't want to stand solidly behind; isn't that so? A. That is the normal course. I can't testify from my own knowledge.

Q. The Dayton Company is not subnormal, is it? A. No.

Q. It would not reach its position that it has reached in the industry to-day, if it were? A. Well, there are lots of subnormal things go a long ways.

Q. Now, will you tell me what the Dayton Company meant by this statement: "For a woman to feel that she has done justice to herself and her appearance, she will, out of sheer necessity, have to resort to better clothes." What did the Dayton Company mean by that?

Mr. Haycraft: That is objected to, Mr. Examiner, irrelevant and immaterial, improper cross-examination. I object to that, Mr. Examiner.

Examiner Bennett: I heard you. Let us see the document, please.

9086

(Document handed to Examiner Bennett.)

Mr. Albert: May it please the Court, may I point out that this witness has specifically testified on direct something which thus far has not been testified to by anybody else, that the Dayton Company is meticulous in the truthfulness of its advertisements.

Mr. Haycraft: Well, there is nothing about that statement to indicate otherwise.

Mr. Feldman: It is their advertisement.

Mr. Haycraft: What of it? I say it is immaterial and irrelevant. There is nothing about that statement read to the witness that can have any probative value or tends to contradict anything the witness has said.

9087

Examiner Bennett: As I understand it, you have read this first paragraph and asked what was meant by it.

Mr. Albert: I read this sentence here (indicating).

Examiner Bennett: This paragraph?

Mr. Albert: Beginning 401.

Mr. Haycraft: May I be heard on the objection, your Honor? Unless your Honor feels that you want to overrule it. I do not want to waste time.

Examiner Bennett: I will let him answer, if you give him the whole thing.

Mr. Albert: Yes, I am showing it to him.

Examiner Bennett: if you give him the whole context.

Mr. Haycraft: Will you read the question?
(Question read.)

The Witness: I do not think I can add anything to what this statement says by itself. I did not propose the booklet or pass on it. As a matter of fact I have not seen it to my knowledge ever before. Probably I read it at one time. It has no special meaning to me.

Examiner Bennett: We will adjourn until 10 o'clock to-morrow, and will meet at this place.

Mr. Albert: Very well, your Honor.

(Whereupon, at 4.30 o'clock P. M., an adjournment was taken.)

Dayne Donovan—For Commission—Cross.

9091

Room 307, Federal Building,
Minneapolis, Minnesota,
September 3rd, 1936.

Met, pursuant to adjournment, 10 o'clock A. M. C. S. T.

Before: JOHN W. BENNETT, *Examiner*.

(SAME APPEARANCES)

PROCEEDINGS.

Examiner Bennett: Be in order, please. You may proceed. All right, Mr. Donovan.

9092

Mr. Donovan: Good morning.

DAYNE DONOVAN thereupon resumed the stand for the Commission and, having been previously sworn, testified further as follows:

Cross-examination by Mr. Albert (continued).

Q. Referring to Commission's Exhibit No. 715, Mr. Donovan, to the last page thereof, I read you the following language: "To achieve the smartest and the latest fashion in your costume, that is every woman's aim. If you depend on Dayton's timely, lovely selections you are assured of styling in the best of taste, the last minute touches and pleasant pricing." And ask you what is meant by that?

9093

Mr. Haycraft: Objected to. There is nothing ambiguous about that. It speaks for itself.

Examiner Bennett: There isn't any question yet.

(The question was read.)

9094

Dayne Donovan—For Commission—Cross.

Mr. Haycraft: I have objected to the question, Mr. Examiner.

Examiner Bennett: Is that your language?

Mr. Haycraft: It has no probative value.

The Witness: It is not my language.

By Mr. Albert.

Q. Is not that the language of the Dayton Company?

Examiner Bennett: Well, I will overrule your objection, if you want to find out what his interpretation of that language is.

9095

Mr. Albert: Yes, your Honor. That is all I want.

The Witness: I believe the language is the language of Maurice Rentner or his concern; that is, the selection of words, and so on. I believe that this booklet presented to us—I think when we got it we looked at the illustrations and got through Mr. Rentner's nephew, I think, an idea of about what it contained, probably about some idea of the wording, and so on, but not any—not in any definite way. The booklet came, was approved, passed by our advertising office, or at least subscribed to; I presume, and sent in; but as to any other interpretation, I can't help you any on that. I presume it means about what it says, according to their light.

9096

By Mr. Albert.

Q. Then, do you wish us to understand, Mr. Donovan, that insofar as Dayton's is concerned, they let a book go out containing certain descriptive matter and printed matter without being fully aware of the significance of what was said and what they were lending their name to?

Mr. Haycraft: That is objected to as irrelevant and immaterial, no probative value.

Examiner Bennett: I will let him answer.

The Witness: Well, I don't think that I can tell you what you may interpret from it. I say, there are the facts. You can draw any conclusion you wish from them. I don't know any more than is down there. Usually we do check our things pretty closely that go out.

By Mr. Albert.

Q. Didn't you read that before it went out? A. I don't recall having personally read it, no.

9098

Q. When is the first time that you read it? A. I don't remember. In fact, I don't know that I ever read it word for word. I looked at the illustrations.

Q. When is the first time that you got the idea that it was a swell book? A. When one of our competitors had it the previous year and did business on it.

Q. The same book? A. No, a book like it, or that—well, let me amend that. It is a book on that order and with the same name.

Q. Then you weren't referring to this book when in your direct testimony you said it was a swell book? A. No; I was referring to this book.

Q. When did you first think that this book was a swell book? A. This particular book, I presume?

9099

Q. Yes. A. When I saw how the dresses sold that were illustrated in the book.

Q. When were you able to compare the sale of the dresses with the illustrations in the book if prior to this time you hadn't read the book?

Mr. Haycraft: That is objected to. There is nothing in the testimony that he did make any such

9100

Dayne Donovan—For Commission—Cross.

comparison. I don't know whether he did or not. Why don't you ask him?

Mr. Albert: He just said he did.

Mr. Haycraft: No, he didn't.

The Witness: Not quite that, Mr. Albert.

Examiner Bennett: What is the question?

(The question was read.)

Examiner Bennett: I will let him answer. Over-ruled.

The Witness: I can only say this: I know that the dresses in the book sold, and that was the basis of my general statement that it was a good book. We liked it. I didn't refer to any feature of it particularly. We know the dresses sold.

9101

By Mr. Albert.

Q. How did you first know what dresses were illustrated in that book that you had in stock? A. How did I first know what?

Q. Or when did you first know that, rather? A. Well, I don't suppose I know exactly what you mean. Our buyers bought the dresses in the book, and I knew that they had bought them.

9102

Q. And aside from that, that is all you knew about that book? A. Well, I knew the general character of the book, the way it was printed. It is a very good-looking booklet, and very creditable, and I knew that one of our competitors had had a similar book the year before and that customers had praised it, and that I had liked that kind of a book.

Q. Did you not go through that book in order to make certain that there wasn't anything in that book that might be objectionable to the Dayton Company's standard or policy or series of advertising, of the truthfulness or anything of that nature; is that so? A. No, sir. There is a question that I can't answer. I did not. It is not my function.

I presume that the advertising office done that, and if a book has the general character of something that we think is of value to us, I let them do the checking of the words and check the policies. They are very good at it.

Q. You have to check up on your buyers, don't you, to see that they are doing their work properly; do you not?

Mr. Haycraft: Objected to, irrelevant and immaterial.

Mr. Albert: It is a foundation question, your Honor, in the light of the last answer.

The Witness: Why, I am perfectly—

Mr. Haycraft: It has no bearing upon the last answer, and I object to it.

9104

Examiner Bennett: Overruled. Go ahead.

The Witness: Why, certainly, I keep a reasonably close check on them as well as anybody can.

By Mr. Albert.

Q. Didn't you testify that so far as Mr. Dayton is concerned, Mr. Dayton said that there isn't anything that he knew of that the buyers weren't responsible for in the sale of their merchandise? A. I did so testify.

Q. Therefore, the buyers would be somewhat responsible for whatever is in that book; isn't that so?

Mr. Haycraft: That is objected to as absurd. He is carrying this examination to the point of absurdity.

9105

Mr. Albert: Quite right. I am trying to make Mr. Donovan look as absurd as possible.

Mr. Haycraft: You are not making Mr. Donovan absurd, you are making yourself absurd.

Examiner Bennett: Do not make these remarks across the table. You are making this record much longer than it ought to be. Read the question.

9106

Dayne Donovan—For Commission—Cross.

(The question was read.)

Examiner Bennett: Yes. Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Donovan, the Dayton Company writes the ads for the Minneapolis newspapers; don't they? A. Our advertising office does, yes.

Q. Do you see those ads at all? A. I see most of them, in part at least.

Q. You check up on them before they go out; don't you? A. Roughly, yes.

9107

Q. In order to make certain that your departments are getting the proper sort of promotion in the advertisements, isn't that so? A. Why, yes. I am a party to what goes in the advertising.

Q. That is right. A. Roughly. I don't assume full responsibility for the advertising or the ads.

Q. Now, Mr. Donovan, I show you Commission's Exhibit 728, being an advertisement in the "Minneapolis Journal" of November 8, 1935, by the Dayton Company, and ask you what the Dayton Company meant by the following: "Mary, Mary, quite contrary, out-Mulligans Mulligan, if such a thing could be"?

Mr. Haycraft: Object to that, Mr. Examiner, no probative value.

9108

Examiner Bennett: I will let him answer, give his interpretation of it, if he has any.

The Witness: Well, my interpretation of it is that, among other things, Miss Mulligan does well, they have a knack of styling for younger girls, well liked, and that this ad refers to the fact that those particular touches and things which Mulligan put on her garments are even more pronounced than the ones which we are showing and illustrating here.

By Mr. Albert.

Q. Do you mean by that that Mulligan had outshone itself in the designing of these dresses? A. No, I think my other statement tells it as completely as I can. Mulligan does many other things, certain things very well. She has very cute yarn embroidery on her things and different little wooden ornaments and for such characteristics Mulligan dresses are recognized as such. I suppose that it seems that it has some of these pronounced treatments of hers and that they are pronounced in the garments.

Q. Do you say that the design of the dress has nothing to do with the Mulligan popularity? A. I think there are many things which have to do with Mulligan popularity.

9110

Q. Is there anything in that advertisement, and is there anything in any of the advertisements that you have put into evidence here that in any way attempts to advertise or play up the fact that the dresses are good fits or that the material in the dresses is of particularly high order, and is it not a fact that the only thing that is played up in all of the advertisements that have been put into evidence is the design and the style of the dresses?

Mr. Haycraft: That is objected to. The advertisements speak for themselves.

Examiner Bennett: I will let him answer.

The Witness: Well, I am frank to say I have not read all of these advertisements for a long time. I do not know just what is in them.

9111

By Mr. Albert.

Q. I will let you have them and look them over, Mr. Donovan. A. An ad like this, which starts in talking about sub-debs, for which we pay money, right there is our intention to sell to a certain size range and to attempt to enter a certain size range first of all.

9112

Dayne Donovan—For Commission—Cross.

Q. Isn't the sub-debs a variegated size department? A. Yes.

Q. Does it not show in that department all sizes? A. Certainly not.

Q. Isn't there a variety of sizes in that department? A. Four sizes.

Q. Well, now, you take a look at these advertisements and you tell us what, in these advertisements, the Dayton Company believes that it is advertising in an attempt to attract customers, upon the basis, one, of the fit of its dresses; two, upon the basis of the quality of the material?

9113

Mr. Haycraft: That is objected to as irrelevant and immaterial, no probative value.

Examiner Bennett: Overruled.

The Witness: Well, I think that they bring forth a number of things, Mr. Albert. I do not deny the style is an important feature in this ad, in particular operations, which has a great deal to do with it.

By Mr. Albert.

Q. Let us see if we can get off this topic, Mr. Donovan. Is it not a matter of fact that in so far as women are concerned, when a woman comes in to buy a dress she assumes, and anybody that buys any clothing assumes, first, that they are going to buy something that will be a proper fit—

9114

Mr. Haycraft: That is objected to.

Mr. Albert: And second—I have not finished my question, Mr. Haycraft.

Mr. Haycraft: What did you pause for?

Mr. Albert: That is just for effect, to get you excited.

Mr. Haycraft: Well, you failed.

By Mr. Albert.

Q. (Continued) —and second, that if it had confidence in the reputation of the store that it is doing business with, the customer will believe that the material will be worth the money paid for it, and what a customer goes into that store for—when she goes in for a dress—is to see something that is a good model and good design in fashion and trend?

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. (Continued) Is that not substantially true?

9116

Mr. Haycraft: That is objected to as being—

Examiner Bennett: Overruled. He may answer.

Mr. Haycraft: Will you let me state my objection?

Examiner Bennett: Go ahead.

Mr. Haycraft: The objection is, Mr. Examiner, it is about quadruple in form. It is highly objectionable. It is argumentative. The witness has answered it to the contrary.

Examiner Bennett: I know he has answered it to the contrary. He is trying to break down the answer.

Mr. Haycraft: I would like to again ask that counsel refrain from standing between me and the witness.

9117

Mr. Albert: I am sorry.

Mr. Haycraft: I would like to be considered a part of this court room scene.

Mr. Albert: Personally, I think it is a lot of off-stage noise, but if you want to join the cast—

9118

Dayne Donovan—For Commission—Cross.

Examiner Bennett: Make an objection and I will pass upon it. I think the shortest way is the best way.

The Witness: Am I to answer?

Examiner Bennett: Yes, you may answer.

The Witness: Would you mind reading the question, please? As I remember, it is a lengthy one.

By Mr. Albert.

Q. But you do remember it? A. I remember you asked the question, but I would like to know the details, which you included, so I do not make a wrong answer.

9119

(Question read.)

Examiner Bennett: You may answer, but confine yourself to women, and do not try to cover the whole universe as to anybody who buys any clothes anywhere.

The Witness: I do not know what I can say other than that when a customer comes into our store she first inquires what we can show her in the size that she requires and frequently we lose many sales because we have a desirable fashion or style in a size which she cannot wear. I cannot believe that all she thinks about is the fashion or the style of a dress. I think that is one of the things that she thinks about.

9120

By Mr. Albert.

Q. Well, isn't the first thing she wants to settle the style of it, and then she will see if the dress fits her? A. I would say very greatly—I have no knowledge of what the first thing they want to settle in their minds is, except in my opinion is, "What have you in my size that will look well on me?" That is the first thing she wants to settle, is if we have something in the size for her.

Q. Well, let me put it this way, Mr. Donovan: Would any woman buy a dress which fits her and which has good material if she is not satisfied and if she is not pleased with the design or the model of the dress?

Mr. Haycraft: That is objected to, Mr. Examiner. That assumes that the woman he is talking about wants the latest style and she wants a stylish dress, and she may be satisfied with something less than that. I don't think we are getting anywhere. We are running in circles.

The Witness: If I may make a comment, Mr. Albert, and you won't take it amiss—

Mr. Haycraft: I have an objection.

9122

Examiner Bennett: I will overrule the objection and let the witness answer.

The Witness: Will you read the question?

Q. (Previous question read by the reporter.) A. Well, it is one of the qualifications which she wants. I have known them to come into the store and say, "This is the only place in town I can get a 38½ dress, but I don't like it, but I have to buy a dress."

By Mr. Albert.

Q. That is the type of woman that comes in and all she wants is something to cover her? A. I don't know what percentage wants something to cover them or which percentage wants something else. I am not an expert on what every woman wants. I believe fashion is highly important and the style of the garment.

9123

Q. Is there any general type of dress in which style or the design of the dress is not important? A. The only kind I have discovered is a burial dress.

Q. What kind? A. Burial dress.

(Laughter.)

9124

Dayne Donovan—For Commission—Cross.

Q. That is a new one that you added since we left Chicago? A. That is not true.

Q. We did not hear of that in Chicago. A. I do not know what you heard in Chicago.

Q. You do not mean that? A. I was tossed out early in the second day, before I heard what you—

Q. Well, you read it, didn't you? A. Well, you would not want a witness dumb enough to say he did not read it or did not have any opinion about this case.

Q. All right, that is all I wanted you to say. Is it your opinion that, aside from a burial dress, there is no dress in which style is not important? A. I said that is one of the circumstances.

9125

Q. Are there others? A. There may be other instances, but in general style is a very important factor of a dress. no use denying that.

Q. The only one you can unequivocally state that style is not an important factor in is in a burial dress? A. Well, I believe that style in a burial dress is less important than it is in almost any other kind of dress. Although I have known burial dresses to be sold to Polish bridesmaids to wear at weddings. I presume they are assumed to have some style value or she would not buy it.

Q. Do you mean to say that Dayton's sell burial dresses to women for weddings? A. No. We show them dresses and explain what they are for, and the girls in this particular party wanted to buy them for use as bridesmaids at a wedding.

9126

Q. Your burial dresses were of a particular style that your customers wanted to wear at a wedding? A. I would say lack of style. The fact that they appealed to these girls is evidence that they did not have the remotest idea of style. Did not care anything about it.

Q. How much of your clientele would you say had such an idea of style? A. An extremely small percentage.

Q. A small percentage? A. Such a small percentage as to be practically negligible.

Q. Mr. Donovan, you stated that most girls had no idea or conception of design or style? A. I assume their knowledge of style was pretty small.

Q. And, of course, were these burial dresses of very good material or very enchanting material? A. Well, they were in a very nice color which the girls liked.

Q. Color and nothing else? A. Mostly color.

Q. What was the needlework on these dresses? A. Very good in front and pretty bad in the rear.

Q. How about the workmanship? A. Well, I think that answers the question. The workmanship was good in spots and not very good in other spots.

9128

Q. Yet despite that fact, in so far as these girls were concerned those dresses were the height of style and the height of design, sufficient for them to want to wear them at a wedding, despite the poor workmanship and poor needlework and your refusal to even testify as to the kind of material?

Mr. Haycraft: Object to that as being immaterial, contrary to the witness' testimony.

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

Q. Well, now, Mr. Donovan, Dayton's uses display windows in its store, does it not? A. It does.

9129

Q. Do you put dresses in those windows? A. Very frequently.

Q. You also put dresses on the floor of your department for display, do you not? A. Continuously.

Q. What is the purpose of that? A. We wish to show new features of the dresses or what we consider to be salable features of the character frequently of color, frequently in exemplification of problems of size and fit which

9130

Dayne Donovan—For Commission—Cross.

we think we can take care of, and frequently for new touches in designing.

Q. As a matter of fact, Mr. Donovan, isn't the only reason, or certainly the prime reason, why you put dresses in your show windows and display them on your floor is in order to allow your customers to see those dresses and to see the lines of them, the design of them, the model of them, the style of them, and thus be attracted to come in and attempt to purchase those dresses? A. With many other things, yes.

Q. You think that a woman can see very much of the fabric of the dress aside from its connotation from outside your store, looking into your show window? A. I do.

9131 Q. She could tell the quality of the material aside from being able to distinguish the kind of material it is? A. Very well, very well. If we have a sign showing this is the new lustratone that we had in our window last week, and the new Parma Violet color, I think it will show it very well.

Q. Do you think your customers have to be told that is a certain color? A. If it is a new color, they do. If they have seen it somewhere else, probably it is not.

Q. I think your answer is that signs regarding the color assist the shopper in being able to determine from the sign, looking into the show window, the quality of the material?

A. I do not think I said that, Mr. Albert.

9132 Q. That is what I was talking about. A. I did not mean to state that a sign indicating a particular color will give any indication of quality of material.

Q. Let us start all over. Do you think that your women shoppers can tell from the outside, looking into your show room window, the quality of a dress in your window aside from being able to distinguish that the dress is either of silk or some other material?

Mr. Haycraft: Objected to. It has already been answered by the witness.

Examiner Bennett: All right. I will sustain the objection. I don't think it means anything.

Mr. Albert: Exception.

Q. Well, Mr. Donovan, will you tell me what it is about a copy of a better dress that makes that copy sell?

Mr. Haycraft: That is objected to as not being proper cross-examination. It refers to nothing in the direct examination.

Examiner Bennett: Overruled. You may answer.

Mr. Haycraft: There is nothing established to show what a copy is. How is he going to tell? 9134

The Witness: Do you want me to answer?

Examiner Bennett: Yes, if it does sell. I don't know anything about it.

The Witness: Well, I think it is the same thing that makes any dress sell, Mr. Albert.

By Mr. Albert.

Q. What is that? A. Well, that it is probably—assuming that the dress does sell—

Q. Yes. A. It must be well sized, it must fit, it must have attractive styling to it, it must have pretty good workmanship for the kind of a garment that it is at the price. It must be of an interesting fabric, pleasing, harmonious and nice color, and be reasonably priced with what it appears to be. 9135

Q. Is it your contention, Mr. Donovan, that in so far as the sale of a copy of a better dress is concerned, that the dress sells because of the fact, first, that it has up-to-date design in the style trend as copied from better dresses; second, that it has good workmanship; and, third, that it has good fit?

9136

Dayne Donovan—For Commission—Cross.

Mr. Haycraft: Objected to. The witness has already answered that question.

Examiner Bennett: Sustained. That is not the statement of the witness.

The Witness: No.

Examiner Bennett: It is almost directly opposite.

Mr. Albert: May I have the witness' answer read back to me?

(The answer was read.)

By Mr. Albert.

Q. Do copies of better dresses have those elements? A. Very frequently.

Q. When they sell? A. Well, all dresses, I believe; have those, including copies, yes.

Q. Is it your contention that all dresses of good workmanship—is it your contention that all dresses have good workmanship and are good fits? A. No, not all dresses.

Q. Well, then, what is it that you can get in the better dress from the Guild manufacturers that you can't get in a copy dress? A. I think I covered practically that same ground yesterday, but I will do so again if you wish.

Q. Let me put the question this way then, Mr. Donovan: What is it that you can—withdraw it. Do the dresses that are copies of the better dresses and that compete, according to your testimony, with the better dresses that you sell have equally as good workmanship and equally as good fit as the Guild merchandise?

Mr. Haycraft: Objected to. I don't understand that to be the witness' testimony.

Examiner Bennett: Read the question.

(The question was read.)

Mr. Haycraft: I didn't understand that copies competed with the better dresses. There is no such testimony.

Examiner Bennett: I don't recall his testimony to that effect.

Mr. Haycraft: I don't either.

The Witness: I didn't so testify.

Examiner Bennett: If you will cut out that part of it, why, and make it a question, a plain and simple question as to those two classes of dresses, I will let him answer.

Mr. Haycraft: There is no foundation laid yet for it. He hasn't established knowledge yet.

Examiner Bennett: I will sustain the objection to that question in that form.

Mr. Albert: Exception.

By Mr. Albert.

Q. Since February of 1936, Mr. Donovan, has the Dayton Store been purchasing copies of Guild merchandise?

Mr. Haycraft: Objected to as not proper cross-examination, your Honor, irrelevant and immaterial to the issues in this case.

Examiner Bennett: I will let him answer. Overruled.

Mr. Haycraft: I object to it further unless the question is confined to his own department, so he knows what he is talking about.

Examiner Bennett: Well, of course, I think it is understood that he is confined to his own departments. 9141

The Witness: For the first two or three months—I am giving you my honest convictions as to the length of time—it may vary a week or two, but the first two or three months following the red card boycott we did not change our policies in any respect. In other words, we had adhered to the Guild policies prior to that time as regards to purchasing

9142

Dayne Donovan—For Commission—Cross.

9143

of so-called copies or purchasing so-called copies of manufacturers, and I would say there never was an exception; but we did not hold any meetings of buyers and say, "This is over. Now go ahead and buy all the copies that you can," or anything of that kind. We stuck to virtually what we had been doing before. Within the last two or three months the question has come up whether or not we should knowingly buy copies, and in every case the ruling has been that we would not buy a dress under any conditions because it was a copy or because it wasn't. If it looked to be—you understand that since not having access to Guild houses we have no idea of what is or what is not a copy unless the manufacturer tells us, and they may or may not tell us—but we have not at any time bought a dress because it was a copy of a Guild dress that we didn't think it was a good dress or because one of our competitors had it and we knew he was selling it. We bought it strictly on its merits as a dress. If it looked right to us, looked as if it would sell, for the last three months we have—would be buying it, otherwise we have been passing it. And I might add that not over ten days ago I passed a line. He said it was a copy line of one of the best known Guild houses and I said we are not interested in it. We just don't care about the dresses. We are passing it. If they had been good dresses and looked as if they had been salable, perhaps we would have bought them if we needed them.

9144

Q. Then since February of 1936 you have been substantially conducting your business in substantial conformity with the Guild policy with respect to the protection of style? Remember—I am only saying "substantially," Mr. Donovan. A. Yes, I understand, and I am endeavoring

to give you the picture as we see it. As I say, we haven't copying, in the first place, has never been to us—

Q. No. Will you answer the question, please? A. Well, all right.

Q. Mr. Donovan? A. Excuse me.

Mr. Haycraft: I object to the witness being interrupted, Mr. Examiner.

Mr. Albert: The witness obviously realized he wasn't answering the question and he desisted himself.

Mr. Haycraft: Well, he did not desist until you interrupted him.

The Witness: I was going to back up to it again. 9146

Mr. Haycraft: The witness is entitled to make an explanation. This question is a broad question. I think he is entitled to make a full explanation. I object to his being interrupted.

Examiner Bennett: I will permit a full explanation. Go ahead.

The Witness: I will leave out that objectionable part.

Examiner Bennett: Give the best answer you can. Do you want the question?

The Witness: We made no ruling whatever on whether we would or would not buy copies for several months following the red carding, and we did practically the same as we did before. I don't say that the buyers didn't buy copies; maybe they did. I don't know whether they were copies or not. We didn't see the Guild lines. We didn't get any notices from the Guild that this was a copy, and I presume we did buy copies. But we didn't make a policy of buying copies of Guild lines or copies of our competitors' merchandise. 9147

9148

Dayne Donovan—For Commission—Cross.

Q. So that substantially— A. I am not quite through.

Q. I am sorry. A. Within the last two or three months, as I mentioned before, the question has come up and our store has expressly forbidden or requested the department managers, including myself and others, again not to make a policy of buying copies because it is a copy, but to relax our former policy to the extent that if we see a good dress which we think will sell, to buy it on its merits as a dress without reference to its being a copy or where the manufacturer got the design, because that is his problem.

9149

Q. Would you care to answer this question, Mr. Donovan: Where you purchased the dress solely upon its merits and subsequently learned, within a reasonable time after delivery, that the dress was a copy, is it your policy today to return them because it is a copy?

Mr. Haycraft: That is objected to. The witness has no way of learning that, he has already said.

Mr. Albert: If it please the Court, I believe the witness is perfectly qualified to state what his policy would be if they learned that it was a copy.

Examiner Bennett: I will overrule the objection. You may answer. Do you want the question again?

The Witness: No, I don't need the question. Why, if we were told that a dress was a copy of another dress, I do not think we would have any warranty for returning it.

9150

By Mr. Albert.

Q. You don't think what? A. That we would have any warranty for returning it. I don't believe that we have been stamping orders the last two or three—or I don't believe that we would attempt to return it because we don't think the manufacturer would take it, and further I believe—

Q. Now——

Mr. Haycraft: Let him finish his answer. Let him complete his answer.

By Mr. Albert.

Q. Are you finished with your answer? A. And further, I don't feel any longer under any obligations to return it.

Q. In so far as the agreement with the Guild is concerned? A. In so far as the agreement with the Guild is concerned, correct.

Q. Now, granted that perhaps you might have no legal justification for returning the garment because you didn't have the protection of the warranty stamp, would you, after learning that the dress was a copy, reorder?

9152

Mr. Cant: If the Examiner please, on behalf of the Dayton Company, I object to the question on the ground that the Examiner nor the respondent is interested in what the policy of the Dayton Company has been since it was red carded on February 17th, 1936. It is a matter of confidential information and has no relevancy, no bearing here.

Mr. Albert: May I point out to your Honor, off the record, the relevancy and the pertinency of the question, or does your Honor think it unnecessary?

Examiner Bennett: If you wish.

Mr. Cant: I ask that the witness be protected for that purpose, for that reason.

9153

Examiner Bennett: Does the representative of Dayton Company want to hear what this gentleman has to say?

(A discussion is had off the record.)

Examiner Bennett: I shall sustain the objection of the Dayton Company to further going into the policies subsequent to the red carding.

Mr. Albert: Exception.

9154

*Dayne Donovan—For Commission—Cross.**By Mr. Albert.*

Q. Do you recall, Mr. Donovan, when the Dayton Company started using the warranty stamp?

Mr. Haycraft: Objected to as not being proper cross-examination.

Examiner Bennett: Overruled. If you did use it. Did you use that stamp?

The Witness: We did.

Examiner Bennett: Yes.

By Mr. Albert.

9155

Q. When did you start; do you recall? A. I believe it was in June or July of 1935.

Q. That is the first time that you used that stamp? A. Well, it is the first time that I remember it being invariably and universally used, and meetings held to see that it was used, and letters written by New York that it must be used.

Q. Had you used it at all prior to that? A. I am not clear whether we have or not. I have been asking myself that same question and not been able to decide. We had discussed the matter. It is my impression that we used it part of the time and did not generally use it.

9156

Q. I show you Commission's Exhibit No. 701 and ask you if this will refresh your recollection as to whether or not you used the warranty stamp prior to June or July of 1935? A. You asked if this refreshes my memory as to whether we did or did not use the warranty stamp?

Q. Yes. A. No; I can't say that I can add any more than I have. I am not sure whether we used it. Of course, you didn't require it on all orders, as I remember it, and I believe possibly we used it on some orders, and did not on some others.

Q. Is there any exception in that Commission's Exhibit No. 701?

Mr. Haycraft: I object to that. The witness didn't write that exhibit.

Examiner Bennett: Well, this is cross-examination. Go ahead. You may answer.

The Witness: May I have the question again? (The question was read.)

Mr. Haycraft: I wish to point out further, your Honor, that this witness was not interrogated about the use of the stamp at all.

Examiner Bennett: About what?

Mr. Haycraft: No question was asked of him about the use of that stamp.

Examiner Bennett: Well, it seems to me there was. At any rate— 9158

Mr. Albert: Certainly, your Honor.

Examiner Bennett: At any rate, this part of it—

The Witness: What is the question that I am to answer?

(The question was read again.)

The Witness: Why, the only exception can be in the phrase "we would be glad to co-operate so long as this proves possible, and that we would not knowingly buy"—

Q. That is the only exception? A. There is no exception on the warranty stamp. It says: "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators Guild of America, Incorporated. The purchaser reserves the right"—and so on. It says that we will stamp our apparel with that stamp. 9159

Q. As a matter of fact, do you know that Mr. Larson testified that that stamp was agreed to be placed upon all orders?

9160

Dayne Donovan—For Commission—Cross.

Mr. Haycraft: That is objected to. The witness was not present when Mr. Larson testified, and I don't recall that he did so testify.

Examiner Bennett: I will sustain an objection to what Mr. Larson testified to.

By Mr. Albert.

9161

Q. Now, Mr. Donovan, I show you Commission's Exhibit No. 706, which is your letter to Mr. Post, dated May 8th, 1935, and ask you what you mean by the following: "You know, of course, that we have two inexpensive dress departments on our second floor and several basement dress departments, all of which compete closely with the chain stores and mail order houses, which by the nature of their business have no need of the F.O.G.A. and no contracts with them"? Now, what do you mean by this sentence which follows: "It is possible that this fact really need not concern us, but at least it has been one reason for our hesitation"? What do you mean by "It is possible that this fact really need not concern us"? If you want to follow me there (indicating). Well, it seems to me that statement is pretty clear. The only way that I could explain it any further is that I believe that the Guild expected to get into their organization all of the stores selling dresses, or at least many of these chain shops, and it is possible that I referred to that; that in the course of time you would have that problem, if there was any, eliminated by taking in such shops as were competing with us and not with—not members of your organization.

9162

Q. Do you mean, then, that if the Guild succeeded in signing up to the declaration of co-operation all or substantially all of the chain stores, that then there would be no problem at all as far as the Dayton Company was concerned with the competition of chain stores? A. No.

I don't—it wouldn't eliminate all problems immediately but it would answer a part.

Q. Substantially most of them; isn't that so? A. Not even most of them, but it would take care of one rather vital point, we think.

Q. It would take care of that chain store competition point; wouldn't it? A. Well, I don't think we would have much argument left as far as maintaining our competition position with regard to certain price lines of the business. I think it would help us answer that argument, yes.

Q. In so far as style piracy is concerned? A. Well, in so far as your objectives were concerned.

Q. Do you or do you not know, Mr. Donovan, that as the lower-price lines were embraced within the Guild program more and more chain stores have signed the declaration of co-operation with the Guild? A. I know nothing at all about that. I haven't followed it at all; I have followed it still less since February 17th.

By Mr. Albert.

Q. Is Sears-Roebuck chain store competition of the—

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. (Continuing) —of the Dayton Store? A. Is Sears-Roebuck competition to ourselves?

Q. Yes. A. Yes, they compete with us.

Q. Do you not know that they have signed the declaration of co-operation with the Guild? A. I do not know whether they have or not.

Q. Is J. C. Penny chain store competition with you?

A. Well, it is, I think, in some of our departments.

Q. Do you not know that they have signed the declaration of co-operation? A. I do not know whether they have or not.

9166

Dayne Donovan—For Commission—Cross.

Q. Do you know that the Darling Shops is a chain store competition of the Dayton Company? A. The Darling Shops?

Q. Yes. A. I don't know those shops.

Q. Do you know that the Darling chain has signed the declaration of co-operation with the Guild? A. I don't know.

Mr. Haycraft: That is objected to, Mr. Examiner. The witness said he didn't know. As a matter of fact, I don't believe it has.

Examiner Bennett: There is no testimony or proof on that point.

9167

By Mr. Albert.

Q. Now, Mr. Donovan, coming back to Commission's Exhibit No. 706, the first sentence which I read to you is the following—

Examiner Bennett: Just a moment.

9168

Q. Now, Mr. Donovan, I read you the third sentence in the second paragraph of Commission's Exhibit 707, which reads as follows: "You know, of course, that we have two inexpensive dress departments on our second floor and several basement dress departments, all of which compete closely with the chain stores and mail order houses, which, by the nature of their business, have no need of the F.O.G.A. and no contracts with them." Now, am I correct in saying that that sentence reveals the fact that the Dayton Store in following programs and performing policies of the Guild were of the opinion that there might be some injury to them as a result of the fact that chain stores, who did not sign the declaration of co-operation, might compete with them; is that not a fair interpretation of that sentence? A. I think it is fair, Mr. Albert, with the exception that you should say at the end

there that we felt there might be some injury due to our lower dress department, due to the fact that we could not carry the same kind of merchandise and compete with these chain stores. I think that is what you meant.

Q. I read you the following sentence and ask you, does not the following sentence refer specifically and precisely to the previous question which we have just discussed: "It is possible that this fact really need not concern us, but at least it has been one reason for our hesitation"? Now, what, in your opinion, at that time was there about that fact that need not have concerned you?

Mr. Haycraft: The witness has already answered that question, Mr. Examiner. It is objected to. 9170

Mr. Albert: I think it is far from answered.

Mr. Haycraft: Same question propounded him, and he answered it.

Examiner Bennett: Well, I will let him repeat his answer.

The Witness: I referred to the fact that according to my understanding of the Guild's projected program over the six months that perhaps they were going to sign up all these chain stores and so on eliminated the difficulty that we anticipated due to their being allowed to carry copied styles and sell them in large quantities, while we were deprived of these styles. That is as close as I can get to it, Mr. Albert. 9171

By Mr. Albert.

Q. And you do not know to what extent the Guild has been successful in obtaining declarations of co-operation from chain stores?

Mr. Haycraft: Objected to as immaterial and irrelevant and already gone over.

9172

Dayne Donovan—For Commission—Cross.

Examiner Bennett: We will take a recess of ten minutes.

(Recess.)

Examiner Bennett: Come to order, gentlemen.

By Mr. Albert.

Q. I read you the following question of Mr. Haycraft on page 5112 of the record: "Q. Was any attempt made to re-order from the manufacturers you have named? A. Yes, there were one or two attempts made. Q. With what success? A. The re-orders were not filled." Did you mean by that that the re-orders were not accepted and that the
9173 manufacturers refused to accept orders? A. Yes, I think what happened, I remember one order came back, which was not accepted at all, and I believe the other case it was simply returned to us or was not—I think it was returned to us. The manufacturers were fair in the matter. They said they could not ship.

Q. I just wanted to make sure of what you meant by that. I think there was a confusion of terms there. A. Maybe.

Mr. Albert: May I have Commission's Exhibit 707 for Identification?

Mr. Haycraft: It is not offered. Do you think you are entitled to it?

Mr. Albert: It is up to you, Mr. Haycraft.

9174 Mr. Haycraft: It is up to the Examiner.

Mr. Albert: Counsel for the respondent has asked counsel for the Commission to produce Commission's Exhibit 707, with which the witness refreshed his recollection. No request was made to look at the paper at that time, at the time the witness was interrogated. Now I am asking whether or not the Examiner believes that, under the rules followed by the Commission, it is now incumbent

upon counsel for the Commission to turn this exhibit over to counsel for the respondent.

Examiner Bennett: I think any paper used by the witness on examination is subject to inspection.

Mr. Haycraft: I would have given it to him at that time.

Examiner Bennett: Yes.

Mr. Haycraft: Mr. Examiner, I think also I should make the point, in fairness to the witness, that when I showed this telegram to the witness he said it did not refresh his recollection.

Examiner Bennett: Well, if it develops that he knows nothing about that telegram—

9176

Mr. Haycraft: He knows about the telegram all right, but the telegram did not refresh his recollection as to the question I asked.

Mr. Albert: I offer in evidence, if it please the Court, Commission's Exhibit 707, which is a telegram signed by Mr. Donovan, addressed to Mr. Larson of the Dayton Company.

Mr. Haycraft: There is no objection.

Examiner Bennett: Let me see the telegram. Is that objected to? If there is no objection on the part of the Commission, we can let it go in as Commission's Exhibit 707.

(Thereupon the document referred to, heretofore marked for identification Commission's Exhibit 707, was received in evidence.)

9177

By Mr. Albert.

Q. Now, Mr. Donovan, did you have any conferences with Mr. Bergdahl or any representative of the A.M.C. stores on or about the time that telegram, Commission's Exhibit 707, was sent? A. Yes, I am very sure I had discussed various phases of the Guild proposals and of the

9178.

Dayne Donovan For Commission—Cross.

Guild operations and all our rules with Mr. Bergdahl in an informal way. It was not a definite meeting to arrive at conclusions. We just talked about it.

Q. What did Mr. Bergdahl tell you with respect to the inclusion in the Guild program of the \$10.75 dress houses?

A. I do not remember any specific discussion of \$10.75 dress houses.

Mr. Albert: My question is: "Is it, as a matter of fact, true that the request for the inclusion of the 10.75 dress line in the program was at the instigation of the A.M.C.?" This witness can answer the question.

9179

Examiner Bennett: I will ask him: Do you know anything about that situation?

The Witness: I do not know who started this talk about 10.75. I cannot state as to that.

By Mr. Albert.

Q. You do not know ~~who~~ instigated it? A. Certainly, as far as your question is concerned, 10.75 dresses, I don't know who broached the proposal first. I know you claim the A.M.C. did. I do not know that they did. I do not know the opposite, then.

Q. Do you wish to amend your testimony that the proposal was made by the Guild to conform to your statement just now that a proposal was discussed but you do not know who it was that suggested the inclusion?

9180

Mr. Haycraft: Objected to. As to that point, the witness has not said anything now at all in contradiction to what he said before. He was testifying as to the Dayton Company and now the question refers to the A.M.C. stores outside of the Dayton Company, Bergdahl and somebody else.

Examiner Bennett: I will sustain the objection to the form of the question.

Mr. Albert: Exception.

By Mr. Albert.

Q. As divisional merchandise manager of the Dayton store, is it fair to say that in order to keep up with the daily trends in the industry, what takes place therein, you make it a practice of reading "Women's Wear"? A. I read "Women's Wear" on every occasion on which I get an opportunity. I regret that I occasionally miss issues when I am on the train or when I am in New York and do not happen to get hold of a copy.

Q. But aside from those peculiar circumstances, you attempt to follow "Women's Wear"? A. Religiously. I make a practice of reading "Women's Wear" when I can.

Q. Was the first time that you heard of the inclusion of the 10.75 dress line in the Guild program on or about May, 1935? A. Well, it was in the spring of 1935. I cannot tell you about that. 9182

Q. I show you Respondent's Exhibit 45 for Identification, being an advertisement of "Women's Wear Daily" of Wednesday, August 9, 1933, and ask you if you saw that advertisement?

Mr. Haycraft: That is objected to. The exhibit is not in evidence.

Mr. Albert: So, I suppose I cannot ask the witness any questions in an attempt to offer it in evidence.

Mr. Haycraft: No foundation laid, nothing to show that this witness has anything to do with "Women's Wear," was a writer or an official of that organization. 9183

Mr. Albert: The question is a very simple one: Did you see that?

Examiner Bennett: I overrule the objection at this point. I want to see what is going to develop.

Mr. Haycraft: Exception.

Examiner Bennett: Do you expect to connect it up with anything, Mr. Albert?

9184

Dayne Donovan—For Commission—Cross.

Mr. Albert: Yes, your Honor, it is very pertinent with the particular inquiry I am on now.

Mr. Haycraft: What inquiry are you on now I don't know.

Examiner Bennett: All right.

The Witness: I do not remember having seen it.

By Mr. Albert.

Q. Do you remember Dress Creators League, constituting the 10.50 and 10.75 manufacturers, becoming part of the Guild on or about that time, August, 1933? A. No, I do not.

9185 Q. Did you have any knowledge of it at that time whatsoever? A. I can't remember now that I had any knowledge of it.

Q. That is, you may have had knowledge of it at the time and were cognizant of it then, but you have forgotten? A. It is possible.

Mr. Haycraft: Move that be stricken, Mr. Examiner.

Examiner Bennett: Beg pardon?

Mr. Haycraft: I move those questions and answers, to which I have objected, be stricken now.

Examiner Bennett: I will grant the motion. It seems as though it was surplusage.

Mr. Albert: Exception.

9186

By Mr. Albert.

Q. Now, you have testified as to the inability to obtain merchandise from certain Guild manufacturers. Among those Guild manufacturers that you have testified you were unable to obtain merchandise from, you include the International Dress, is that not so? A. Yes.

Q. Was the fact that the Dayton Company bought no merchandise or ordered no merchandise from the Inter-

national Dress Company due solely to the fact that the International Dress Company refused to sell the Dayton Company as a result of the red carding? A. Will you read the question, please?

(Question read.)

Mr. Haycraft: That is objected to, Mr. Examiner, as calling for a knowledge from this witness which is beyond his possibility.

Mr. Albert: We will soon show whether it is beyond his possibility, your Honor.

Examiner Bennett: I will overrule the objection. You may answer.

The Witness: I do not see how I can answer. 9188
It depends on the line. Their line is usually good. I believe we had bought merchandise from them in many years. I do not know that we bought from them. There are many Guild houses, many good Guild houses, that we cannot buy from.

By Mr. Albert.

Q. Now, as a matter of fact, Mr. Donovan, is it not a fact that the Dayton Company ceased, stopped, or refused, whichever word you choose, to purchase goods from the International because of the fact that the International sold to many retailers in Minneapolis and that it was the contention or the belief of the Dayton Company that that affected the value of the International Company's dresses to the Dayton Company? 9189

Mr. Haycraft: Too many questions there, Mr. Examiner. I object to two of them, anyway.

Examiner Bennett: I will overrule the objection and let him answer.

The Witness: I do not think the Dayton Company as an organization ever permanently refused or definitely refused to buy International dresses.

9190

Dayne Donovan—For Commission—Cross.

for any reason. I do know that the buyer there at that time, Mrs. Chase, had some time prior to December, 1935, had some rather lengthy discussions with—I can't remember the salesman's name who represents us—represents International in this territory, the man with the carnation, good looking boy—had discussed with him the matter of his selling so many accounts, and I believe once or twice she did not buy from him on one of his trips. Whether or not that was the sole reason I don't know. I know that she felt that he sold too many people and didn't confine his line.

9191

By Mr. Albert.

Q. As a matter of fact, Mr. Donovan, wasn't that question of selling too many retailers in Minneapolis of such importance to the Dayton Company that the Dayton Company made it the subject of complaint and inquiry to the Minneapolis Guild and also made it the subject of complaint and inquiry to the Fashion Originators Guild?

Mr. Haycraft: Objected to as irrelevant and immaterial.

Examiner Bennett: Overruled.

The Witness: We have discussed the matter of selling to a large number of accounts in the city, at the Minneapolis Fashion Guild. I don't know whether we could be considered the prime-movers in such discussion or not. We did discuss it and once or twice I have written letters, part of which letters were along some such line.

9192

Mr. Albert: Will you mark this for identification, please?

(The paper referred to was marked Respondents Exhibit 62 for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibit No. 62 for Identification and ask you if that is your signature on that letter, on the letterhead of the Dayton Company? A. That is mine.

Q. Is that a letter that you sent to Mr. Golby? A. It is.

Mr. Albert: I offer this in evidence.

Mr. Haycraft: No objection. It just tends to support the Commission's complaint.

Mr. Albert: May I ask the latter remark of Mr. Haycraft be stricken? It is a sad commentary of the Commission if it is dependent on side remarks by Mr. Haycraft to support it or give it any added strength.

9194

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification Respondents' Exhibit 63, was received in evidence.)

By Mr. Albert.

Q. Now, Mr. Donovan, did you on or about July of 1935 have any correspondence with Mr. Bergdahl with respect to your signing the declaration of co-operation with the Fashion Originators Guild?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

9195

Mr. Albert: Laying a foundation, your Honor.

Examiner Bennett: Well, I will see what is coming. Overruled.

The Witness: On or about July, 1935, have we had any correspondence with Mr. Bergdahl in reference to signing the agreement with the Guild?

9196

*Dayne Donovan—For Commission—Cross.**By Mr. Albert.*

Q. Yes, sir. A. Well, we are in pretty close correspondence with Mr. Guild, or Mr.—pardon—Mr. Bergdahl, Mr. Albert. I can't say whether I did or not. I presume it might have been discussed.

Mr. Albert: Mark this for identification, please.

(The paper referred to was marked Respondents' Exhibit 63 for Identification.)

By Mr. Albert.

9197

Q. I show you Respondents' Exhibit No. 63, and ask you if you recognize this as being a copy of a letter sent by you to Mr. Bergdahl? A. I recall a letter to that general effect, yes. I presume this is the letter. I think it is.

Q. Is that the letter that you sent to him on or about July 12th, 1935, over your signature on the letterhead of the Dayton Company? A. I believe that it is the letter.

Mr. Albert: I offer it in evidence.

Mr. Haycraft: No objection.

Examiner Bennett: Received.

Mr. Haycraft: It confirms the Commission's complaint.

Mr. Albert: You certainly must feel weak about it, Mr. Haycraft, if you have got to reiterate your own remarks with respect to it.

9198

Mr. Haycraft: I have all the more reason now for stating that.

(The paper referred to, heretofore marked for identification Respondents' Exhibit 63, was received in evidence.)

Mr. Albert: Have you any objection, Mr. Haycraft, if we substitute a photostat for Respondents' Exhibit No. 63?

Mr. Haycraft: No objection.

Mr. Albert: And 62?

Mr. Haycraft: Yes.

By Mr. Albert.

Q. Now, Mr. Donovan, you have given testimony with respect to the relationship of the Dayton Company with manufacturers as reflected in "Good Housekeeping," "Vogue," "Harper's" and similar magazines, and you have, I believe, referred to that relationship as co-operating in the advertising. What do you mean by that?

Mr. Haycraft: I object to that. The witness did not use that language. That was mine.

9200

Mr. Albert: He didn't correct you, did he, Mr. Haycraft?

Mr. Haycraft: That doesn't make any difference.

Mr. Albert: Well, it certainly is more objectionable if that language was used by Mr. Haycraft and the witness fell into error as a result of Mr. Haycraft's questions. I am attempting to clear it up, in justice to the witness.

Examiner Bennett: All right.

Mr. Haycraft: The witness didn't say that.

The Witness: What did I mean by—

By Mr. Albert.

Q. Let me try to shorten this, Mr. Donovan. Did you mean anything more in that than that the Dayton Company was invited to permit its name to be used in the advertisement as a retail store selling the merchandise named in the advertisement? A. Well, we have—we had a voice in the selection of the garments to be used.

9201

Q. Well, of course, but you paid nothing for the advertisement, did you? A. I do not believe that we did. That would have to be settled definitely by the advertising department.

9202

Dayne Donovan—For Commission—Cross.

Q. Don't you know? A. No. It has been my impression that we paid nothing for it, but I might be wrong.

Q. Now, Mr. Donovan, you have testified that the re-carding of the Dayton store and the inability to obtain better merchandise lowered the morale of the sales persons in the store; is that correct? Am I right in that? A. Yes.

Q. Did you make any attempt whatsoever to improve the morale of your sales force?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: Well, I think it is irrelevant and immaterial. I will sustain the objection.

9203

Mr. Albert: Exception. If it please the Court, I offer to prove that if the witness had been permitted to answer the question, he would have testified that no effort was made to improve the morale of the sales force. Upon the receipt of which answer, I believe that I would have been able to elicit from the witness that a lack of morale in a sales force is reflected in a decreased volume of sales.

Mr. Haycraft: I will ask the witness whether that is true or not, what he said.

Mr. Albert: That is objected to, if it please the Court, unless I am permitted to ask the witness the questions.

9204

Mr. Haycraft: I can't allow counsel to put such a statement in the record which is contrary to what I am satisfied the witness will say.

Examiner Bennett: Yes. It is subject to a motion to strike.

Mr. Haycraft: I move to strike it.

Examiner Bennett: It may be stricken.

Mr. Albert: Exception.

By Mr. Albert.

Q. How often do you go into the markets, Mr. Donovan?

A. I have testified that they go depending upon the department and the necessity, and a number of factors, anywhere from two times a season to possibly eight, maybe ten times in certain departments, depending upon the departments that you have in mind.

Q. Now, does the itemization of the number of trips made by buyers, as reflected in Commission's Exhibit No. 714, constitute the entire number of trips to the various markets made by the buyers? A. No, it does not.

Q. What does it reflect? A. I can tell you how this was—would that cover your question if I tell how this was? 9206

Q. I would rather you answered this question: Did the buyers make any trips to the markets in addition to those trips? A. Yes, they did.

Q. How many more? A. I don't know. I didn't count them.

Q. You didn't count the total number of trips that they made to the market? A. No; I have had no occasion to count them, so I haven't.

Examiner Bennett: We will adjourn until 2 o'clock for luncheon.

(Whereupon, at 12:30 o'clock P. M., the hearing in the above-entitled matter was adjourned until 2 o'clock P. M. of the same day, Thursday, September 3, 1936.) 9207

AFTERNOON SESSION—2 o'clock P. M.

By Mr. Albert.

Q. I show you Commission's Exhibit 703-A, and ask you if the Dayton Company still feels that the following proposal is still urged by them: "Fashion Originators' Guild Incorporated, members will not sell their product to any one in the city of Minneapolis not a member in good standing of the Minneapolis Fashion Retailers Guild"?

9209

Mr. Cant: If the Court please, the Dayton Company objects to that on the ground that it is a matter of no concern what the policy or the feeling of the Dayton Company is since it was boycotted in February. It is entirely outside of the issues and is irrelevant and immaterial.

Mr. Albert: May I call to the attention of the Court that not only this witness but Mr. Larson has already testified on direct with respect to the matter that is now the subject of the questioning.

Mr. Haycraft: I beg your pardon, Mr. Examiner. I do not concur in that statement.

Examiner Bennett: Yes, I will sustain the objection to the question. I think it is immaterial and irrelevant.

9210

By Mr. Albert.

Q. Does that proposal, joined in by the Dayton Company, reflect the Dayton Company's feeling about the matter to-day?

Mr. Cant: Same objection.

Mr. Haycraft: Objection.

Mr. Albert: May I point out the direct testimony of the witness with respect thereto?

Question by Mr. Haycraft: "Does this agreement, 703-A and B, represent Dayton's position with respect to the Fashion Originators Guild program at that time? Answer: That document did represent the feelings of the Dayton Company at that time."

Question by Mr. Albert interposed at this point: "Has there been any change in the position of the Dayton Company since that document has been prepared? Answer: I do not think there has been any subsequent change in their feelings."

Mr. Haycraft: It was not even my question.

Mr. Albert: It still is testimony on direct, and you did not move to have it stricken.

9212

Mr. Haycraft: How could that be testimony on direct if you asked the question?

Mr. Albert: It is in the record.

Mr. Haycraft: Certainly. It is just confirming what I said.

Examiner Bennett: Well, I am not changing my ruling.

Mr. Albert: Exception.

Mr. Haycraft: What page is that?

Mr. Albert: 5081.

By Mr. Albert.

Q. Does the Dayton Company still feel any doubt as to the practicability or advisability of allowing the retailers of the so-called "Style Piracy Committee in New York to judge whether or not the dresses were copies?"

9213

Mr. Haycraft: Objection.

Mr. Cant: Same objection, if the Court please.

Examiner Bennett: I do not see that the answer of the witness, whatever it may be, would change the situation.

9214

Dayne Donovan—For Commission—Cross.

Mr. Albert: I believe it goes, if your Honor please, to the question of fairness and reasonableness of the plan.

Examiner Bennett: I beg your pardon?

Mr. Albert: I believe it goes to the question of the fairness and reasonableness of the plan.

Mr. Haycraft: It is irrelevant and immaterial.

Examiner Bennett: Well, I think the plan is sufficiently plain from the evidence. Let the tribunal judge as to that.

Mr. Albert: Does your Honor then sustain the objection on the ground that it has been adequately brought out previously?

9215

Examiner Bennett: I think it is irrelevant. I do not see its relevancy. I do not see how it could change the situation nor is it a test of this witness' accuracy or truthfulness or knowledge.

Mr. Albert: Exception.

Examiner Bennett: All right.

By Mr. Albert.

Q. Have you done anything or has the Dayton store done anything at all, Mr. Donovan, with respect to building up resources? A. Well, we have attempted to find resources—you mean building up resources available, I presume?

9216

Q. Yes. A. Well, we have attempted to tell the things we like to have made in certain cases, and give them ideas which would help them to make garments to fill gaps in our stock. We have done that right along.

Q. Have you in any way made use of the dresses that have been imported by the A.M.C. for that purpose? A. The Dayton Company has made no direct use of those imports, but through our A.M.C. office the imports have been shown to such manufacturers as might be interested, and

I presume that our buyers in the market have patronized these manufacturers to some extent and have obtained a little or some use of these garments, imports.

By Mr. Albert.

Q. Had the manufacturers to whom these imports were made available been able to adequately for your purposes adapt these styles in the creation of designs of dresses suitable for your purposes? A. Well, they have certainly been unable to adapt them to give us all the requirements that were made necessary by the absence of Guild houses, but I think they may have made a start along those lines and have made some use and have been some help to us along those lines.

9218

Q. Have they been able to interpret these imports as to create designs sufficient to meet the needs of the Dayton store?

Mr. Haycraft: I object to the use of the phrase "create designs," Mr. Examiner, as having no basis in fact in this record that there is such a thing.

Examiner Bennett: Just read the question.

Mr. Haycraft: I have no objection to the word "adaptation."

Examiner Bennett: Do you want to revise it? Are you willing to accept that?

Mr. Albert: I think the witness is perfectly capable of answering the question as it is, your Honor.

9219

Examiner Bennett: Well, read the question.

(The question was read.)

Mr. Haycraft: No foundation laid for that question, Mr. Examiner. I object to it.

Examiner Bennett: Well, I will sustain an objection to it. If you want to find out whether they have been able to supply goods to the Dayton store suitable to its needs, that is all right.

9220

*Dayne Donovan—For Commission—Cross.**By Mr. Albert.*

Q. In your attempt, Mr. Donovan, to obtain or build up resources, has Dayton Company in any way attempted to subsidize any manufacturers?

Mr. Cant: Now, just a moment. That is objected to, if your Honor please, on the ground it is irrelevant and immaterial and not proper cross-examination, and is a matter which should not be disclosed by this witness on behalf of this company when he has no authority to do so.

9221

Examiner Bennett: Well, I will sustain an objection to that.

By Mr. Albert.

Q. Are you aware of the fact, Mr. Donovan, that various members of the A.M.C. have contributed to a fund to be used in subsidizing manufacturers for the purpose of enabling these manufacturers to supply the members of the A.M.C. with the dresses which they need?

Mr. Cant: Same objection, if your Honor please.

Mr. Haycraft: Irrelevant and immaterial.

Examiner Bennett: I will sustain an objection to that. It is along the same line and I am not going to hear anything indirectly that we would not entertain directly.

9222

By Mr. Albert.

Q. Now, Mr. Donovan, you have testified to the honesty and probity of the Dayton's relationship with its customers; what do you—

Mr. Haycraft: Object to that question, the foundation to start with.

By Mr. Albert.

Q. (Continuing) What do you tell your customers when they come and ask for a Mulligan dress, an Ashley dress, a Quality street dress, and you haven't got it?

Mr. Haycraft: Object to it as irrelevant and immaterial.

Mr. Cant: Same objection on the part of the Dayton Company, and the further objection that the witness should not be compelled to testify at this time what happened since the boycott in February.

Mr. Albert: I believe, if it please the Court, that this goes to the credibility of the witness and the sincerity and the frankness of the testimony of the store in respect to the matter.

9224

Mr. Cant: If your Honor please, we are not trying Dayton's policy here. We are trying merely the issues presented by the complaint.

Mr. Albert: We are trying the frankness of the testimony that has been given, and anything that will tend to show that testimony has not been frank is relevant.

9225

Examiner Bennett: There is only one question as far as the Examiner is concerned, and that is, as he sees it, the question of the adequacy or inadequacy of the supply after the concern was red carded and boycotted by certain manufacturers. Now, I am willing to entertain the questions that bear more or less directly upon that matter. Read the question.

(Question read.)

Examiner Bennett: I will sustain the objection. I do not think we are going into the ethics of Dayton Company.

9226

*Dayne Donovan—For Commission—Cross.**By Mr. Albert.*

Q. Now, you have testified, I believe, that as a result of the red carding you have lost customers who have patronized your competitors in an endeavor to get the merchandise which you have been unable to get, is that correct, substantially? A. Substantially, yes.

Q. Do your customers, when they are unable to obtain the merchandise of you, in any way indicate their opinion or feeling that they will continue to patronize your competitors so long as you refuse to protect the styles of the manufacturers who are members of the Guild?

9227

Mr. Haycraft: Objected to as irrelevant and immaterial, not proper cross-examination.

Mr. Albert: That goes directly to the public interest.

Mr. Haycraft: No foundation whatever.

Examiner Bennett: Well, I am going to let him answer, if he has an answer to that.

The Witness: I have an answer.

Examiner Bennett: All right.

The Witness: I have never heard a customer make a statement like that and I have not heard of, through the buyers and my sales people, of any people making such statements. Would you mind reading the question, so I am sure I get it correct?

9228

Examiner Bennett: You may read the question (Question read.)

The Witness: My answer is correct.

By Mr. Albert.

Q. Do your customers, in any way, make known the fact that they prefer to buy their dresses from those concerns as a result of whose policy they will not see copies of the dresses that they have bought after they have purchased

them? A. I have no recollection of a customer taking that attitude with us.

Q. Have you, in any way, attempted to investigate the proposition in order to determine your customers' reaction to the store policy? A. I have made no special study of it. If that is what you mean. I am in contact with our department managers and sales people and to some extent with our customers, but there have been no evidences of the feelings you described, that have become known to me.

Q. And have you, in any way, had any conference through your buyers or your sales people to determine their reaction to the policy of the Dayton store with respect to the Guild program?

9230

Mr. Haycraft: Whose reaction?

Mr. Albert: Will you read the question to Mr. Haycraft?

(Question read.)

Mr. Haycraft: Objected to. It is too indefinite, irrelevant and immaterial.

Examiner Bennett: I will sustain the objection to that. I do not get it.

Mr. Albert: Exception.

By Mr. Albert.

Q. You have testified, Mr. Donovan, that prior to February of 1936, the styles of various manufacturers have been confined to the Dayton Company, is that so?

9231

Mr. Haycraft: Styles?

Mr. Albert: The dresses.

The Witness: Of some manufacturers, and it is also true that certain styles are common to most businesses.

9232

*Dayne Donovan—For Commission—Cross.**By Mr. Albert.*

Q. By that you mean that in the Minneapolis territory you have the exclusive right to the sale of those manufacturers' dresses? A. I mean that in the City of Minneapolis the sales of those dresses were usually confined to us.

Q. And, as a result of that contract, no other retailer in the City of Minneapolis had a right to sell those dresses, is that so? A. Well, usually we have no definite contract. We had an agreement and the manufacturer permitted us to use the name exclusively in connection with these dresses and, if somebody else had them, it was without our knowledge or permission, and it might have been under another name.

9233

Q. You mean by that you had no written contract of confinement? A. I cannot recall a written contract in any case. It was an agreement.

Q. Was the reason why there was no written contract with respect to the confinement, the doubts of the Dayton Company as to the legality of such a contract?

Mr. Cant: I object on the ground it is absolutely irrelevant and immaterial.

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

9234

Q. Did your order blanks, on which you placed such orders, have anything on them with respect to confinement of the style?

Mr. Cant: Same objection, if the Court please.

Examiner Bennett: Same ruling.

By Mr. Albert.

Q. In your opinion, does not this confinement of style restrain and restrict the competition in the City of Minneapolis?

Mr. Haycraft: Oh, object to that.

Mr. Cant: Just a moment. Objected to as absolutely incompetent, irrelevant and immaterial.

Examiner Bennett: The same.

Mr. Albert: Exception.

Examiner Bennett: I think the witness is not competent to testify on that subject as far as the developments have gone.

Mr. Albert: I offer to prove, if the Court please, that if the witness were permitted to answer, he would answer that the policy of the confinement of sales restricts and restrains the competition in the area in which the confinement is applicable.

9236

Mr. Cant: Objected to for the reasons given, if your Honor please.

Mr. Haycraft: I move it be stricken.

Examiner Bennett: It may be stricken, as irrelevant and immaterial.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Donovan, what is the total dollar value of sales in Department 371, in your price line 12.95 to 13.95, for March of 1935?

Mr. Haycraft: Objected to, irrelevant and immaterial, not proper cross-examination.

Mr. Cant: Same objection and further objection, it calls for confidential information which this witness should not be required to divulge.

9237

Examiner Bennett: What is the question?
(Question read.)

Examiner Bennett: The Examiner has not tried to compel the production of those figures, and he is going to continue that policy. He has some doubt as to the validity of those statements, without going

9238

Dayne Donovan—For Commission—Cross.

into the matter of supporting evidence, but it is going to be left to—that is a matter left with the attorneys to support or argue out.

Mr. Albert: In order to save time, may I ask whether or not the same objection will be sustained with respect to questions seeking to elicit the total dollar volume in the months and for the price line as indicated in Commission's Exhibit 713?

Mr. Haycraft: I will say that will be objected to, Mr. Examiner. I wish to explain in connection with that—

Examiner Bennett: I beg your pardon.

9239

Mr. Haycraft: I wish to explain in connection with that, in light of the remarks you made a moment ago, the exhibit does not refer to dollars and cents.

Examiner Bennett: No, I know it does not, but dollars and cents is the basis.

Mr. Haycraft: Dollars and cents is not the basis of the document he is examining this witness on, that has a basis of units.

Examiner Bennett: That has a basis of units, has it?

Mr. Haycraft: Yes.

Examiner Bennett: All right. I think I was mistaken in my comment then. I will sustain that objection.

9240

Mr. Albert: Exception.

Examiner Bennett: Where you are dealing with units. My impression was you were dealing with dollar percentages.

By Mr. Albert.

Q. What is the relationship between your dollar volume in percentage for the month of March, 1935, in your 12.95

to 13.95 price line, as compared with your total dollar volume in your ready-to-wear dress departments in the departments covered?

Mr. Haycraft: The objection will be the same. In addition, the question, as now worded, assumes there is such a relationship.

Mr. Cant: Same objection on the part of the Dayton Company.

Examiner Bennett: Let me see the document, so that I can have the situation in mind.

(Document was handed to the Examiner.)

Examiner Bennett: These are all units, are they?

9242

The Witness: Yes, those are the number of garments sold at those prices.

Examiner Bennett: All right. I will sustain the objection.

Mr. Albert: Exception.

Examiner Bennett: That was not gone into in connection with that document at all.

By Mr. Albert.

Q. What percentage of your total dollar volume is the dollar volume of the total figure for the four months March, April, May and June, 1935, to the total dollar volume of your ready-to-wear department for the same period in 1935?

9243

Mr. Haycraft: Same objection, Mr. Examiner.

Mr. Cant: Same objection, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Albert: Exception. I offer to prove that if the witness had been permitted to answer, his answer would have revealed, with respect to the price lines and departments affected, regardless of

9244

Dayne Donovan—For Commission—Cross—Redirect.

the percentage of Guild merchandise on hand in the department, the total dollar volume with respect to that department is an insignificant portion of the total dollar volume of ready-to-wear dress departments.

Mr. Haycraft: I move it be stricken.

Mr. Cant: Same objections to the offer, your Honor.

Examiner Bennett: It may be stricken.

Mr. Albert: Exception. No further questions.

Examiner Bennett: All right. Is that all of this witness?

9245

Mr. Haycraft: No, I have some redirect.

Redirect examination by Mr. Haycraft.

Q. Mr. Donovan, when you were asked on cross-examination as to the elements of salability, did you intentionally leave out the style? A. I thought that in my description of what I considered to be salability of a garment I had fully covered style by getting back to what seems to me in the long run to be the component parts that make style. I had no intention deliberately of omitting the word "style." I believe I offered to reinsert it if they wished.

9246

Q. What is your definition of style? A. Well, I regard style in a garment as being the selection of certain component parts such as neck lines, waist lines, trimming details, details in the material, other things which go into a garment in such manner as to produce an article that is pleasing, if possible, to the customer, what the customer thinks is good looking and wearable.

Q. In your opinion, is the same style satisfactory to all women that come into your store? A. No, it is not.

Q. Why not?

Mr. Albert: That is objected to, if it please the Court, no foundation has been laid. I don't think this witness has demonstrated his knowledge of that.

Examiner Bennett: I will overrule the objection to that.

Mr. Haycraft: You thought he was pretty good. You asked him a lot of questions on it.

The Witness: Well, I shall answer?

Examiner Bennett: You may answer, yes.

The Witness: I believe that different women have different ideas as to what they consider a good looking garment.

9248

Mr. Albert: Including wearing a shroud to a wedding?

Mr. Haycraft: I object to that. I move that it be stricken, Mr. Examiner.

Examiner Bennett: Well, I will strike it because I don't think his interjection was proper.

By Mr. Haycraft.

Q. Will you continue your answer, Mr. Donovan?
I believe that answer is complete enough.

Q. Can you give an illustration of that from your experience? A. Well, I can give you a rather recent one. A woman told me this morning just before I started down here to the court room that she was leaving our millinery department and that she didn't care what the style was; that she simply would not and could not wear one of those high crowned hats that the millinery department was trying to sell her.

9249

Mr. Albert: That is objected to, if it please the Court. I ask that the witness' answer be stricken as entirely immaterial. The vagaries of women with respect to their hats I think exceeds their vagaries with respect to clothes.

9250

Dayne Donovan—For Commission—Redirect.

Examiner Bennett: Read the answer.

(The answer was read.)

Mr. Albert: I still say that we see women wearing hats that they don't really like but they are in style.

Examiner Bennett: It may be stricken.

Mr. Albert: Thank you, your Honor.

By Mr. Haycraft.

Q. I should like to have you confine your testimony, Mr. Donovan, to the divisions of the store under your supervision. Now, will you read the question?

9251

(The record was read.)

The Witness: Well, I can only say that it is a matter of daily occurrence to have two women come in and say, "I like that style," and the friend with her say, "I don't like that style."

Mr. Feldman: And they like some other style?

The Witness: What?

Mr. Feldman: And they like some other style.

By Mr. Haycraft.

Q. You were cross-examined, Mr. Donovan, with respect to a letter that you wrote to Mr. Post, May 8th, 1935, Commission's Exhibit No. 706. I will ask you to testify at this time as to what your understanding was as to the Guild program on or about May 8th, 1935, referred to in your testimony. A. Well, the information concerning the projected program of the Guild came to me through certain letters from the Guild, through contact with other people who were in closer touch with the Guild's program, and through some conferences with Mr. H. O. Bergdahl of our New York office who at that time was, I believe, in almost daily contact with Mr. Albert Post. Through those contacts I arrived at the idea that the Guild in attempting

9252

to enforce the returns of all merchandise including the lower-price ranges which were alleged copies was going to be fairly lenient with the stores involved until such time as lower-priced manufacturers, who were acknowledged copyists at the time, would be able to produce garments of their own design, and also until such time as certain chain stores and other stores who were not at that time Guild signatories had been induced to sign up with the Guild. I shortly—or I recently wrote Mr. Bergdahl of the A.M.C. to ask if that confirmed our understanding, and the matters that we were talking of along that line at the time, and I would like to refer to that letter, if I may.

Mr. Albert: That is objected to.

Examiner Bennett: Is that about that date?

The Witness: To see if my recollection is correct.

Examiner Bennett: Is that about that date?

The Witness: No, this letter is of recent date, your Honor, but it refers to those times, that time.

Mr. Albert: That is objected to, if it please the Court, as improper redirect. I ask that the answer of the witness and his testimony in response to the question be stricken as adding nothing new to the testimony heretofore elicited from the witness.

Examiner Bennett: Does that letter to which you are referring reflect your ideas at the time you were asked about it, that is, back in 1935, or does it reflect your present attitude?

The Witness: It reflects—

Examiner Bennett: That is what you asked about, the ideas relating back to 1935; in the early part of 1935.

The Witness: Well, this letter does refer, your Honor, to—

9256.

Dayne Donovan—For Commission—Redirect.

Examiner Bennett: And it is on that that you are refreshing your recollection; is it?

The Witness: Yes, sir, directly.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. Have you refreshed your recollection; have you anything to add to what you have said? I mean to what you have testified to? A. Why, the letter adds nothing substantial to that testimony, Mr. Haycraft, except that our stores, or, at least, Mr. Bergdahl feels that the policies or those two exceptions that we took for granted and we understood to have received, were not granted.

9257

Q. What exceptions do you mean? A. I quote, if I may, the words here;

"The F.O.G.A. has always attempted to enforce returns at all price lines with the exception of the fact that the writer along with several managers of New York Resident Buying Offices, had an understanding with the Guild that the F.O.G.A. would not enforce returns in our stores, because of our basement and budget shop departments. The Guild rescinded this understanding when they took in the \$10.75 manufacturers in July of 1935, but agreed to a definite policy of leniency at that time, which was to extend until the inexpensive manufacturers would have organized themselves sufficiently on the new basis of creating their own styles. This took for granted that it would require some considerable time for the inexpensive manufacturers to find designers, since it was agreed that there was not a sufficient number of good designers available to enforce such an all inclusive policy without considerable damage to the manufacturers as well as to the retailers who purchased low priced merchandise.

9258

"Also, until such times as the large retail dress distributors, chain stores, and so on, of inexpensive dresses

would have signed pledges agreeing to co-operate with the Guild."

Those were the two provisions, and that was in accordance with my recollection.

(The paper writing referred to was handed to the Examiner.)

By Mr. Haycraft.

Q. Now, Mr. Donovan, you were questioned with respect to Commission's Exhibit No. 714 on cross-examination. I will ask you if you will explain for the Examiner what factors you took into consideration in preparing this exhibit with respect to the expenses of the individuals named therein?

9260

Mr. Albert: That is objected to.

By Mr. Haycraft.

Q. (Continuing) On the dates indicated?

Mr. Albert: That is objected to, if it please the Court, as improper redirect. The witness was asked exactly one or two questions with respect to that exhibit. It was originally put in evidence without any explanation whatsoever, and there is nothing in the cross-examination that warrants any further direct examination by Mr. Haycraft with respect to a sheet of paper containing figures that he put into evidence without explaining it at all.

9261

Examiner Bennett: Read the question.

(The question was read.)

Examiner Bennett: Yes. I will sustain the objection.

Mr. Albert: Thank you, your Honor.

9082 *Dayne Donovan—For Commission—Redirect—Recross.*

By Mr. Haycraft.

Q. You were asked, Mr. Donovan, on cross-examination as to whether or not the individuals named here had made other trips to Chicago than those—other trips to the places indicated in the exhibit than set forth in the exhibit. Do you recall that? A. Yes.

Q. And if I recall your testimony correctly you said that they had? A. (Witness nods head affirmatively.)

Q. I will ask you whether or not you have included in this exhibit any transportation expenses other than to Los Angeles?

9083

Mr. Albert: That is objected to, if it please the Court. The exhibit speaks for itself.

Mr. Haycraft: Well, then, why do you ask the questions on cross-examination? It spoke for itself just as well then as it does now.

Examiner Bennett: Read that question.

(The question was read.)

Examiner Bennett: I think that appears on the face of the document. I will sustain the objection to it.

Mr. Albert: Thank you.

Mr. Haycraft: That is all on redirect examination.

Recross-examination by Mr. Albert.

9084

Q. Mr. Donovan, in response to Mr. Haycraft's questions with respect to your understanding of the Guild program, on or about May of 1935, or the summer of 1935, you refreshed your recollection from a letter and read certain portions thereof into the record. May I see that letter?

Examiner Bennett: Yes; he has a right to see it.

Mr. Albert: Will you mark that for identification, please?

(The paper referred to was marked Respondents' Exhibits 64-A and B for Identification.)

By Mr. Albert.

Q. I notice in this letter, Mr. Donovan, that you refer to a letter that you sent to Mr. Bergdahl of August 22nd. Have you that letter? A. No, I haven't.

Q. Is it available? A. Why, I might be able to get a carbon of it. I didn't expect that it would come into question so I didn't provide myself with a carbon copy. I might even insert the original.

Q. Have you any objections to providing us with a carbon copy of it? A. Not at all, if I can secure one.

9266

Q. Will you communicate to us as to whether or not there is one in existence? A. I will have to look, and I will look.

Q. And if there is one in existence will you furnish me with a copy of it? A. I will guarantee that.

Mr. Albert: I offer into evidence Respondents' Exhibits 64-A and B for Identification, being a letter dated August 28th, 1936, from Mr. Bergdahl to Mr. Donovan.

Examiner Bennett: It seems to be settled that if you put part of a document into the record the rest of it should go in.

Mr. Haycraft: Then I withdraw my objection.

Examiner Bennett: All right; proceed.

9267

By Mr. Albert.

Q. Mr. Donovan, don't you know, as a matter of fact, that if the Dayton Store agrees to protect the styles of members of the Fashion Originators Guild and abide by the policy of the Fashion Originators Guild, that the members of the Fashion Originators Guild will be happy to sell the Dayton Store?

9268

Dayne Donovan—For Commission—Recross.

Mr. Cant: Just a moment.

Mr. Haycraft: In other words, if you will agree to the boycott, it is O.K., is that it? Is that the purport of that question, Mr. Examiner?

Examiner Bennett: I will sustain the objection.

Mr. Haycraft: I will object to the question.

Mr. Albert: How many objections do you want, Mr. Haycraft?

Mr. Cant: It is sustained.

Mr. Haycraft: One.

By Mr. Albert.

9269

Q. Are you aware of the fact, Mr. Donovan, that the voluntary act of the Dayton Store in refusing to protect the styles of members of the Fashion Originators Guild resulted in the refusal of the members of the Guild to sell their merchandise to the Dayton Store?

Mr. Cant: That is objected to as irrelevant and immaterial, not proper examination at this time.

Examiner Bennett: I will sustain the objection.

Mr. Albert: Exception. I offer to prove, that if the witness had been permitted to answer the question, he would have answered that if the Dayton Store agree to protect the styles of the Fashion Originators Guild, the members of the Fashion Originators Guild will sell the Dayton Store merchandise.

9270

Virginia C. McDonald—Fpr. Commission—Direct.

9271

VIRGINIA COLLINS McDONALD was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. What is your name, please? A. Virginia Collins McDonald.

Q. Where do you live? A. 906 West 42nd Street, Minneapolis.

Q. What is your occupation? A. I am a shopper for the Fashion Originators Guild.

Q. In what city, Mrs. McDonald? A. Minneapolis.

Q. How long have you had that position? A. Since a year ago last March 1st.

Q. Who employed you? A. Fashion Originators Guild.

Q. Incorporated? A. Incorporated.

Q. Of America? A. Of America, Incorporated.

Q. And have they continued to employ you since that time? A. Yes, sir.

Q. What are your duties?

Mr. Albert: That is objected to, if the Court please. I think it has been thoroughly gone into. It has been explained by everybody as to what the duties of a shopper are and I believe that Mr. Donovan has volunteered some testimony with respect to it, and, at this stage of the game, I believe that in order to save the record and to save time this cumulative evidence should not be permitted:

Examiner Bennett: I will overrule the objection. She may answer.

The Witness: Shall I answer?

Examiner Bennett: Yes, what are your duties?

The Witness: I shop for copies of original designs.

9272

9273

9274

*Virginia C. McDonald—For Commission—Direct.**By Mr. Haycraft.*

Q. Where? A. Minneapolis, in the stores.

Q. What stores? A. The stores that belong to the Guild.

Q. You mean retail stores? A. Retail stores.

Q. Can you give a list of them at the present time?

Mr. Albert: May I ask Mr. Haycraft to remove his hand from his mouth? I cannot hear him.

The Witness: Well, there is Powers Mercantile—

Mr. Albert: I ask the question be read. I have not heard it.

9275

Examiner Bennett: It may be read.

(Previous question read.)

The Witness: Powers Mercantile, Maurice Rothschild, J. C. Penney, L. S. Donaldson, John W. Thomas, Bjorkman, Harolds, Jackson Graves, Raleighs, Sallys, two Marha Lee shops.

By Mr. Haycraft.

Q. How do you spell that? A. Capital M-a-r-n-a. There are numerous small shops.

Q. What is that? A. There are quite a few of the smaller shops, Buttrey Stores, Incorporated, Featherstone, Jennie Lee, Strem Fashion Studio.

9276

Q. How do you spell that? A. Capital S-t-r-e-m Fashion Studio, Marion Stricker. Did I say J. C.—yes, I said Penney; I believe that is a good part of the list, anyway.

Q. Young Quinlan? A. Young Quinian, yes.

Q. Benton? A. Benton, yes.

Q. How about Calla Dubois? A. Yes.

Q. Donaldsons? A. Yes, I have that.

Q. Daytons? A. No.

Q. You did shop Daytons? A. Yes, I did.

Virginia C. McDonald—For Commission—Direct.

9277

Q. When did you stop shopping Daytons? A. About February 16th or 17th last.

Q. Gerners? A. Gerners, yes, Fields.

Q. Field? A. F-i-e-l-d.

Q. Mary Jones? A. Yes, Mary Jones.

Q. Lind Gowns? A. Not any more, they are out of business.

Q. Did you intend to indicate there were two stores in Buttrey Stores and Featherstone? A. Well, Buttrey Stores is the same, main office. They have a chain of stores throughout Montana, Wyoming and Minnesota. The Featherstone store which opened up about three months ago is of that group.

9278

Q. Is there more than one store in Minneapolis? A. No, not more than one, no retail store.

Q. How long have you been shopping Sallys? A. Sallys?

Q. Yes. A. Well, I believe I got word of their joining about six months after March 1st when I started working.

Q. It was some time last fall? A. I believe so.

Q. How about Marna Lee; how long have you been shopping that store? A. Since the beginning.

Q. How long have you been shopping J. C. Penney? A. Well, I got word about nine months ago that they had joined. However, the store was not completed until just about three months ago, it was opened here.

Q. So you have just been shopping it about three months? A. Yes.

9279

Q. How about C. L. Johnson? A. On Central Avenue? Yes, they belong.

Q. I say, how long have you been shopping Johnson? A. I think just a short time, around six months.

Q. Do you shop Sears Roebuck? A. No, they belong, but I do not shop them.

Q. You do not shop them? A. No.

Q. Why do you not shop them?

9280

Virginia C. McDonald—For Commission—Direct.

Mr. Albert: That is objected to, if the Court please, as immaterial.

Examiner Bennett: Overruled, you may answer.

Mr. Albert: Exception.

The Witness: What was the question?

By Mr. Haycraft.

Q. Why do you not shop Sears Roebuck? A. Well, as I understand it, Sears Roebuck have signed a declaration of co-operation but that it is not necessary for me to shop them because they do not carry the same type of merchandise that the other retail stores do here.

9281

Q. Was that your instruction? A. Yes, sir.

Q. Who gave it to you? A. Well, I was just told that.

Q. By whom? A. By Mr. Post.

Q. When? A. I don't remember.

Q. Recently? A. No, it is not recently. It was when I first started this work.

Q. First started? A. Yes.

Q. Was there any other store that came in that same category? A. No, sir.

Q. How often do you shop the various stores? A. Well, I try to shop the big stores, by that I mean L. S. Donaldson and Powers, practically every day. The other ones I pick up as I go along, or as I think is necessary.

Q. What is your method of procedure? A. I go through the stocks.

9282

Q. And what price lines? A. Well, I look at them through almost every price line.

Q. Do you go through the basements, too? A. Not now, no. I did.

Q. When did you stop going through the basements? A. The beginning of this summer, last spring.

Q. May? A. About, I should say.

Q. What was the reason for not going through the basements, then?

Mr. Albert: That is objected to, if it please the Court.

Examiner Bennett: Overruled.

Mr. Albert: No knowledge shown or foundation laid on the part of this witness that she knows the reason.

Mr. Haycraft: She knows why she did not; that is what I want.

The Witness: Well, I know why I didn't was that I was asked not to for a while.

Q. Who told you not to for a while? A. I got it from the New York office.

Q. From Mr. Post? A. Mr. Goldstein.

Q. Do you have that letter in your files? A. Yes.

Q. Do you think you could find it? A. Yes.

Q. I would like to have it. A. All right.

Q. When you go through the stocks looking for copies, what do you have in mind? How do you know a copy when you see it? A. Well, the procedure is, I am sent sketches from New York with the original dress, with the style number and the name of the manufacturer of the original, also the manufacturer, if possible, of the copies and their style number, and usually I go and look at the original dress, if I find it, and then I go through the stock. Of course, I know the copies by style numbers and also by how they look.

Q. You look then for copies of garments described to you in this information that you get from New York? A. Yes.

Q. Do you ever try to ascertain the name of the manufacturer when they do not know in New York what the name of the manufacturer is, can you find out for them sometimes? A. Well, there are two ways. I mean, sometimes they know definitely who the manufacturer is of the copy. If they do, it is put on my slip. If they have—I do

9286

Virginia C. McDonald—For Commission—Direct.

not know how this is worked back there, but anyway, I get a little notation which says "Alleged copyist," we will say, "Claudette Frocks. If you find this copy by Claudette, hold a Piracy Committee meeting here, and forward their decision."

Q. Then you would have a meeting here of the local Guild? A. Yes, sir, they would.

Q. Suppose you find that there is a copy in a Guild store, what do you do then when you find a copy? A. I ask to have them returned to the copyist.

Q. Do you give the buyer any paper or anything of that kind? A. Naturally, yes.

9287 Q. Description of it? A. Yes.

Q. What is the usual procedure after you do that? A. Well, the slip is made out signifying how many copies are going to be returned, that is, three or four of one style number of such and such a manufacturer; I sign it and the buyer or the head merchandise man; also I send that slip to New York attached on to a report which I make out every day.

Q. Do you go back to see whether or not the garment has been returned? A. Yes, I do.

Q. You check up on that? A. Yes, sir, I do.

Q. You say you make daily reports to New York. Do you make weekly or monthly reports? A. No.

Q. A number of copies? A. No.

9288 Q. You don't make any tabulation of the number? A. No, I don't.

Q. You just fill out your daily report? A. That is right.

Q. So you wouldn't have any idea as to the number of copies found? A. No.

Q. Over a period of time? A. No.

Q. You followed this same method as you have described now all of the time since you have been employed, or was there a time that you had a different method? A. Well, there have been changes, naturally.

Virginia C. McDonald—For Commission—Direct.

9289

Q. How long have you been using this slip that you talk about which you furnished the buyer? A. Since last fall.

Q. Let's see. That would be November, October? A. I think around October.

Q. Prior to that what did you do? A. I just made out my report sheet and indicated there how many copies I had found.

Q. You didn't get any receipt or— A. No, I didn't.

Q. Or get anything from the buyer himself? A. No.

Q. When you go into a store, do you always go to the buyers and tell them that you are in there looking for something? A. They almost always see me.

Q. They know you? A. They know me, knew me from the beginning.

9290

Q. And they know what you are after? A. Yes.

Q. That is, they know that you are looking for copies? A. Yes, absolutely.

Q. Do you make it a rule to advise the buyer as soon as you go in the store what copies you are looking for?

A. No. No; I just look through the dresses. If I find anything then I talk to her, otherwise I don't bother her.

Q. Otherwise you don't? A. No.

Mr. Haycraft: Mark this the next exhibit number.

(The paper referred to was marked Commission's Exhibit 734 for Identification.)

9291

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 734 for Identification, I show you an article beginning on page 6 and continuing through page 11 entitled "Fashions for fashionables" by Virginia McDonald, and ask you if you are the author of that article? A. Yes, I am.

Q. How did you come to write that article, Miss McDonald?

9292

Virginia C. McDonald—For Commission—Direct.

Mr. Albert: That is objected to, if it please the Court, as immaterial.

Examiner Bennett: What do you expect to show Mr. Haycraft? I would like to have you indicate what it has to do with the matter in hand?

(The exhibit referred to was handed to the Examiner.)

Mr. Haycraft: Perhaps I can ask her a couple of questions, your Honor. I thought that question would probably do it.

Mr. Albert: I will withdraw the objection, your Honor.

9293

Mr. Haycraft: I would like the indulgence of the Examiner for that question and a couple of more as foundation questions.

Mr. Albert: I will withdraw the objection.

By Mr. Haycraft.

Q. Go ahead. A. I was a contributor toward that article—I mean, toward the magazine.

Q. How long have you had that position, have you been doing that contributing to this magazine? A. Since last January.

Q. January of this year? A. Yes, of this year.

Q. Up to the present time? A. Yes.

9294

Q. What was the arrangement that you had with respect to—what is the purpose of the articles that you write? A. Well, it is a fashion article giving fashion hints.

Q. Did you consult the Fashion Originators Guild, Incorporated, before you made this arrangement to publish this article? A. No, sir, I did not.

Q. Did they know anything about it? A. They didn't know a thing.

Q. You mentioned the Guild in it; did you not? A. Yes, I did.

Q. Did you mention the names of prominent members of the Guild in that article? A. Not directly, no.

Q. How about Hattie Carnegie? Do you recall that? A. Yes.

Q. It names some of the Guild manufacturers? A. Yes. I never happened to think of that, though.

Q. Did you mention the names of some of the retailers at Minneapolis that were Guild members, where Guild merchandise may be bought? A. Yes. Not in a direct way.

Q. Refresh your recollection (indicating)? A. Yes, I know. I see what you mean. I didn't understand.

Q. Then you have mentioned, for instance, Hattie Carnegie's dresses can be bought at Young and Quinlands and Harold's, Incorporated? A. Yes.

9296

Mr. Haycraft: I offer the article in evidence.

Mr. Albert: No objection.

Examiner Bennett: All right, it is received. I wish you would excerpt the article.

Mr. Haycraft: I beg your pardon?

Examiner Bennett: I wish you would excerpt the article and relieve the record of some of it.

Mr. Haycraft: You mean to cut it out as a separate exhibit? I will be glad to have the reporter do that, just cut the article out and give the exhibit the number.

Examiner Bennett: I wish you would do that. with that ~~other~~ trade magazine.

9297

Mr. Haycraft: Mr. Examiner, that is all I have of this witness at the present time, but I should like to make the request of Mr. Albert, I don't want to turn the witness over to you just yet. I should like to request the witness to produce the correspondence that she had with Mr. Goldston with respect to Sears Roebuck—no, with respect to not shopping

9298 *Virginia C. McDonald—For Commission—Direct—Cross.*

basements, some time in the spring of 1935, and also a sample report that she makes to the Guild and any written instructions that she may have at the present time; and also a sample report that she leaves with the buyer.

Mr. Albert: I believe, if it please the Court, the sample reports are already in evidence and that written instruction are in evidence. If Mr. Haycraft wants them again we will only be too glad to furnish them. As regards the letter that Miss McDonald has referred to, I have no doubt that we will look for it. If she still has it you can have it.

9299

Cross-examination by Mr. Albert.

Q. You got paid for this article; didn't you? A. Yes.

Q. You were on the staff of— A. I am not on the staff.

Q. Golfer and Sportsman? A. I am just a contributor.

Q. But you have been called upon to write articles at various times that were accepted and were paid for? A. Yes.

Q. As a result of this article appearing in Golfer and Sportsman what happened, if you know, with respect to your relationship with that magazine? A. Well, I was asked not to write any more fashion articles.

Q. Do you know whether that was at the instigation of anybody?

9300

HELEN COFIELD was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name?

The Witness: Helen Cofield.

Direct examination by Mr. Haycraft.

Q. Where do you live, Miss Cofield? A. 4924 South Emerson.

Q. What city? A. Minneapolis.

Q. What is your occupation? A. Department manager for the Dayton Company.

Q. What department do you manage? A. The Sub-Deb Department.

Q. The Sub-Deb Department? A. Yes.

Q. What type of garments? A. Junior sizes and many types of garments.

Q. Do you have dresses, suits, coats, or what? A. We have dresses, coats, suits, wraps, sweaters, skirts, and knit wear.

Q. How long have you occupied that position? A. Four years, the 1st of August last.

Q. Does that department have a number? A. Yes, it does.

Q. What is it? A. 371.

Q. You say four years? A. Four years.

Q. What? A. Four years, August 1st next.

Q. That would be 1932? A. (The witness nodded her head affirmatively.)

Q. Are you familiar with Fashion Originators Guild of America, Incorporated? A. Yes, sir.

Q. When did you first learn of that organization, approximately? I do not care for an exact date. A. Well, I do not know exactly the date. When I first knew of

9304

Helen Cofield—For Commission—Direct.

them as an organization, or when I first knew we were red carded?

Q. When you first knew of them as an organization.

A. About two years, isn't it?

Q. About two years? A. Yes.

Q. How did it come to your attention? A. Many manufacturers we were purchasing from were members of the Fashion Originators Guild, Incorporated.

Q. And they told you that, did they? A. Yes.

Q. Did they call at your place of business? A. No, but it was common knowledge.

Q. What are your duties as department manager of Department 371? A. To buy and sell goods.

9305

Q. Well, where did you buy them? A. New York, mostly; some in Chicago, some in Cleveland, some in Los Angeles, and a small amount in San Francisco; occasionally St. Louis, but the very biggest bulk of it is in New York.

Q. And you sold them at Dayton's in Minneapolis? A. That is right.

Q. What is the price range of the garments that you sell in your department? A. Price?

Q. Yes. A. On the average from 9.75 to 39.75, with some higher, but the bulk of it is—

Q. How about suits, how do they run? A. 17.95 usually, up to about \$100.

9306

Q. These are all retail prices? A. Retail prices.

Q. You say you have coats also? A. Yes, sir.

Q. What price range are they? A. 17.95 to \$135.

Q. Do you ever go to the market yourself to buy these garments? A. Yes, sir.

Q. How often would you say you went in the fall of 1935? A. Fall, starting from August or starting from our first fall purchase?

Q. Take your first fall purchase. A. I would say sixty-seven times, maybe sixty-eight.

Q. Sixty-seven? A. Sixty-seven.

Q. Do you go to more than one place? Do you go to all these markets you speak of? A. You mean the out of town markets?

Q. Yes. A. You mean last fall?

Q. Last fall, where did you go, a year ago? A. Mostly New York, outside of Chicago for some dresses, one shop in Cleveland in the month of November for one manufacturer only, and Chicago was made en route for a half a day between trains.

Q. Now, can you testify from memory as to the principal resources for your department, dresses and suits, in the fall of 1935?

9308

Mr. Albert: That is objected to, if it please the Court, having been fully testified to by Mr. Donovan, purely cumulative. I think we are wasting a lot of time at this late stage of the game in Minneapolis. I ask your Honor to foreclose this line of testimony. It has been fully testified to by Mr. Donovan and I do not believe he was cross-examined about it.

Mr. Haycraft: I do not know why counsel does not want to listen to a buyer.

Mr. Albert: I do not want to listen to the fact that a buyer went to New York.

Mr. Haycraft: If you just give me time, I will bring out all the facts.

9309

Mr. Albert: That is just the point. I do not want my time wasted at this stage of the game.

Mr. Martin: You did not mind wasting our time at your first stage of the game.

Mr. Albert: Then you concede you are wasting time?

Examiner Bennett: Leave this off the record.
(Discussion had off the record.)

9310

Helen Cofield—For Commission—Direct.

Examiner Bennett: Proceed.

Mr. Haycraft: I am waiting for a ruling.

Examiner Bennett: I am waiting for you to get through talking across the table. Are you through?

Mr. Martin: I am through, for the time being.

Examiner Bennett: Now read the question.

(Previous question read.)

Examiner Bennett: Overruled. You may answer, if you can.

By Mr. Haycraft,

Q. Can you do it or can't you? A. I can, yes.

9311

Q. Now will you do so, and indicate in your answer the resources, the type of merchandise, that is whether it is a dress or suit and the wholesale price range? A. Do you want all of the important dress resources and their price ranges and their types?

Q. Yes.

Mr. Albert: That is objected to, may it please the Court, as having been given in evidence with Mr. Donovan with Mr. Haycraft's assistance, and not having been cross-examined on, purely cumulative. It is in the record completely.

Examiner Bennett: Overruled. You may answer.

By Mr. Haycraft.

9312

Q. Go ahead. A. In the higher priced dresses, Junior League, who make ordinarily 12.75 up, depending upon the costume, it may be as high as 69.50 wholesale, but their average prices are 16 to 25 and 29. They make day times and evenings.

Mr. Feldman: Is that average cost or just average price? Do you mean average retail price?

The Witness: Cost. They are asking cost. Ira Rentner Miller, who make daytime things in about the same price ranges as Junior League and about the same type. Will Steinman, who make 10.75 and 12.75 evening clothes. Bon Ray, who make 10 and 12.75 evening clothes. Joann, Junior, Sing Bros., which is synonymous, it may be known by one or the other, make 10.75 and 12.75 daytime clothes, some costumes occasionally higher, but they are a 10.75 house. Val Roy—

Mr. Feldman: Who?

By Mr. Haycraft.

Q. How do you spell that? A. V-a-l, capital R-o-y, make 10.75 daytime things. International, the junior division, who make 10 and 12.75 daytime things, a few evening things. Louise Mulligan, who is our outstanding resource, making 10.75, 12.75, 16.75, and a few above, making daytime and dinner and evening, at 7.75. Ros Anna or Rosenthal Kollman, making 7.75 street things; Debutante, who make 7.75 street things; Security, who make 4.75 street things; Neufeld Fuerst, who make 4.75 street things.

Mr. Feldman: Where are they located?

The Witness: They just moved to 1400. They were 147 West 37th Street.

Mr. Feldman: What do they make?

The Witness: 4.75 street things. Accurate, who make 4.75 street things. Ernest Janowitz, who make 8.75 evening things; Cartwright, who make 10.75 and 12.75, some 16.75 street and evening. Now, there are more, but that is the bulk of the prominent ones.

9316

*Helen Cofield—For Commission—Direct.**By Mr. Haycraft.*

Q. Those were the principal resources last fall, a year ago now? A. Yes.

Examiner Bennett: We will adjourn until 10 o'clock in the morning at this place.

(Whereupon, at 4.30 o'clock P. M., an adjournment was taken.)

9317

Room 307 Federal Building,
Minneapolis, Minnesota,
September 4, 1936.

Met pursuant to adjournment, 10 o'clock A. M. C.S.T.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: Be in order, please. You may proceed.

9318

HELEN COFIELD was thereupon recalled and, having been previously sworn, testified further as follows:

Direct examination (resumed) by Mr. Haycraft.

Q. Miss or Mrs.? A. Mrs.

Q. At the last session you were giving a list of resources in your department in the fall of 1935? A. That is right.

Q. Have you completed that? A. No, sir; we adjourned before it was completed.

Q. All right. You may continue. A. David Westheim.

Q. Which? A. David Westheim, \$10 and \$12.75 street things. Junior Guild Frocks in Chicago, \$10, \$12, and up to \$16.75, street things.

Q. A little bit louder. I can't hear you. A. Did you get the last?

Q. What was that, street something? A. Street clothes, daytime clothes. Silver Dress, \$10.75 and \$12.75 street things. Allan Kay Frocks, which is Lang Kohn.

Q. Was Lang what? A. Lang Kohn, L-a-n-g K-o-h-n of St. Louis, daytime clothes at \$10.75 and \$12.75. Corde, C-o-r-d-e, \$6, \$10.75 street clothes. Rae-Mar Dress in Cleveland, \$6 to \$10.75, R-a-e M-a-r. I think that about completes the list as nearly as my memory recalls it.

9320

Q. Now, of these, were there some of them non-Guild houses or were they all Guild houses? A. No, they are not all Guild houses. The majority of the \$10.75 up cost houses are Guild members.

Q. How about the \$4.75 ones that you mentioned? A. Not to my knowledge.

Q. Were any of the \$6.75, \$7.75 resources Guild houses last fall? A. Only one, and that was Rosenthal Kalman.

Q. Were there any outstanding Guild resources that you depend upon more than any other? A. Yes, Louise Mulligan, Zing Brothers, Steinman—Will Steinman, Junior League, Junior Guild Frocks. Those were the most important resources at \$10.75.

Q. Do you recall when it was that the Dayton store was red carded by the Guild? A. I believe it was February 17th.

9321

Q. This year? A. (Witness nods head affirmatively.)

Q. How did that come to your notice? A. I don't recall exactly. I believe that I was in New York at the time and we were told, and "Women's Wear" carried it.

Q. What was the occasion for your being in New York at that time? A. Buying merchandise.

Q. Did you make any calls on Guild resources after you were red carded on that trip to New York? A. I made a few calls on Guild houses in a friendly way, not to buy merchandise, because, of course, we were not permitted to see their lines. We called on them to find out about our past orders that had been placed with them and what the situation was going to be as to getting delivery on things that were on order at that time.

Q. Were you successful in getting delivery on pending orders? A. Not until a decision was handed down that they could—manufacturers could ship anything that was on order prior to the date of the red carding.

9323 Q. When did you eventually get it? A. March, I believe.

Q. Your said they would not show you their lines? A. Yes.

Q. What does that mean? A. It means that we were not permitted to see their lines of—lines of merchandise because they had been requested—it was part of the agreement with the Guild that red carded stores were not permitted to see their lines.

Q. Did you ever discuss this matter of red carding with any of the representatives of your resources since February? A. Many times.

Q. Do you find the Guild representatives of the Guild houses friendly or unfriendly? A. Decidedly—

9324

Mr. Albert: That is objected to, if it please the Court. It is entirely immaterial. Who knows what friendly or unfriendly means? What this witness' conception of friendly means—

Examiner Bennett: Overruled. I will let her answer. You may answer.

The Witness: Decidedly friendly.

By Mr. Hycraft.

Q. Was any explanation given as to why they did not allow you to see their lines? A. None other than that was the agreement and they were to be penalized by a fine if they showed their lines to red carded stores.

Q. Well, now, what did you do as buyer for Dayton Company when you found you couldn't buy Guild merchandise? A. We tried to replace it, but last spring it was not possible because the market is so limited in the Junior Division that practically every one at \$10.75 up was Guild. There were very few exceptions, which meant we had almost no one to fall back on.

Q. Did that have any effect upon your department? 9326
A. A decided effect of loss of business this spring.

Q. What was the situation—what is the situation this fall? A. It is somewhat better this fall. For one reason there have been several resignations in the Junior Division of manufacturers who were formerly Guild members.

Q. Do you recall some of those? A. Yes. The first resignation was Zim Brothers. I think it was about May when they resigned. Will Steinman and Bon Ray, who have just resigned within the past month. Delroy, who has also just resigned within the past month. That combined with developing some out of town resources which we have not used to a great extent before, and going to the California market, has help to take care of that situation much better this fall than this spring. 9327

Q. What did you do about Louise Mulligan that you handled? A. We didn't—we are not able to replace it at all. It is a distinctly different line which is not replaceable by the regular run of manufacturers' merchandise. It is a marked line.

Mr. Albert: What kind of a line is it?

The Witness: I would call it a marked line. It is a line that you can recognize, anyone who is

accustomed—customers come in and say "This is Louise Mulligan," when we had them, without ever seeing a ticket because they recognize the type of garment that they put out.

By Mr. Haycraft.

Q. Do you have any calls for Louise Mulligan now?
A. Every day, have had all spring and we are still having this fall.

Q. What did you do about the Junior Guild Frocks you mentioned?
A. That is another line that was very difficult to replace because it is a flashy line that is not similar to most other lines at the same price that are available. Louise Mulligan was more difficult to replace, and second, Junior Guild.

9329

Q. What was the situation—what is the situation at the present time with respect to the replacement of Guild lines in your department? You say you have not been able to replace the Louise Mulligan and more difficult to replace Junior Guild frocks. You say Will Steinman you can get now?
A. Yes.

9330

Q. And Joan Junior and Zim Brothers?
A. That is right. It is very much better because of the resignations and because of some replacements, but we have not been able to replace our loss of Louise Mulligan and Junior Guild, and there are still a few resources that we miss greatly, particularly above \$10.75, where there is only two junior—to my knowledge, only two junior recognized resources that make better merchandise above \$12.75. That is Rentner, Miller, and Junior League.

Q. Have you had occasion to check your volume of sales August, 1936, against August, 1935, with the better lines, better dresses?
A. Yes, I have.

Q. What do you find?

Mr. Albert: That is objected to, if it please the Court; the exhibit in evidence speaks for itself.

Mr. Haycraft: It is not in evidence. It may speak for itself, but it has nothing to do with this question.

Examiner Bennett: I will let her answer, if you have any.

The Witness: About \$20 we have lost considerable volume, \$20 and above, against August, 1935, against August of last year.

Q. When you say considerable, can you be more definite than that? A. Not in actual dollars, because our department— 9332

Q. Can you give me a percentage? A. Yes, I would say—

Mr. Albert: That is objected to—

The Witness, (continuing): Twenty to 25 per cent.

Mr. Albert: Miss Cofield, would you mind not answering while I am objecting?

Examiner Bennett: Read the question and statements of counsel.

(The record was read.)

Examiner Bennett: The objection may be taken as having come before the answer, in due time, and overruled. I will let the answer stand. 9333

By Mr. Haycraft.

Q. How many trips did you make to California to replace that merchandise? A. Two.

Q. Did you make any other trips to replace your merchandise? A. Not separate trips. We stopped off in Chicago and looked for things that might be available there, but we go through Chicago, so it was not a separate trip. It was en route to New York.

9334

Helen Cofield—For Commission—Direct.

Q. You mean you spent extra time? A. Yes.

Q. Did you make any effort in the New York market to obtain other markets? A. We individually made an effort and we as a store made an effort to persuade manufacturers to make 10.75 and to persuade some other manufacturers, who were not Guild manufacturers, to make junior sizes.

Q. Did you succeed? A. We got no misses' house to make junior sizes.

Q. How about your volume of business of your lower priced lines, 4.75? A. You mean has it been affected?

Q. Has that been affected? A. No.

9335 Q. Have you made a comparison of August, 1936, with August, 1935? A. Yes.

Q. What does it show? A. It shows that we have held our lower-priced business.

Q. You have held it? A. Yes.

Q. How about this price range, 6.75, 7.75? A. We haven't been affected there at all, because Rosenthal Kollman was the only manufacturer who was Guild at the time of the red carding, and they resigned because they were the only one in the price line that was Guild, and they thought that was not fair, being the only one in the price to be a Guild member.

Q. What about your volume of sales of August, 1936, compared with August, 1935? A. We haven't gotten a completely monthly sales yet for August.

9336

Q. You don't know about it? A. No, the month has just closed. It is not—

Q. Well, do you have an opinion as to what the effect will be on your department if you are not able to get Guild merchandise during the coming seasons, the balance of the fall season? A. I feel very definitely that it will hurt our better business.

Mr. Haycraft: That is all.

Examiner Bennett: Just a moment.

Helen Cofield—For Commission—Direct—Cross.

9337

The Witness: No, I was just——

Mr. Albert: Just a moment.

The Witness: I was just shifting.

Cross examination by Mr. Albert.

Q. I believe you testified, Miss Cofield, that the Junior League was and is a Guild house? A. That is right.

Q. How about Ira Rentner Miller? A. It is.

Q. Are they Guild houses? A. Yes, sir.

Q. Still are? A. To my knowledge.

Q. Will Steinman? A. Not now.

Q. Bon Ray? A. Not now.

9338

Q. Joan, Junior? A. Not now.

Q. Sing Brothers? A. That is the same thing.

Q. Val Ray? A. Not now.

Q. Rosenthal Kalman? A. Not now.

Q. Debutante? A. Not now.

Q. Security? A. Never has been.

Q. Neufeld Fuerst? A. Never has been.

Q. Ernest Janovits? A. Never has been to my knowledge.

Q. Cartwright? A. No.

Q. What is it that Rosenthal Kalman told you, and who, on the part of Rosenthal Kalman, said anything to you? A. If my memory serves me correct, Mr. Kalman.

Q. Well, you are not going to testify to anything which you do not remember, are you? You have already told us that Rosenthal Kalman told you something.

9339

Examiner Bennett: Let the witness answer the question and then make your comment, please. Go ahead.

The Witness: My understanding was that Rosenthal Kalman resigned because he was the only 7.75 Guild member in the junior market.

9340

*Helen Cofield—For Commission—Cross.**By Mr. Albert.*

Q. Who told you that? A. Mr. Kalman.

Q. Mr. Kalman personally? A. Yes.

Q. Where? A. In the showroom.

Q. In New York? A. In New York.

Q. In his showroom? A. In his showroom.

Q. About what time of the year did he tell you that?

A. I would say about the latter part of February.

Q. Did he give you any reason for having resigned from the Guild? A. No, sir.

Q. Did you ask him for the reason, as to whether or not there was any other reason? A. No, sir.

9341 Q. Had he filled any orders at that time with Guild merchandise, do you know? A. I don't believe there was ever any stoppage of merchandise from—

Q. Rosenthal Kalman? A. —Rosenthal Kalman.

Q. During this whole period, Rosenthal Kalman has been continuing to deliver merchandise at least to the Dayton store? A. Yes.

Q. Do you know whether or not he has continued delivering merchandise to other stores?

Mr. Haycraft: Objected to as immaterial.

The Witness: I don't know.

Examiner Bennett: Yes, sustained.

By Mr. Albert.

9342 Q. Did you have any discussion with Mr. Kalman about it?

Mr. Haycraft: Same objection.

Examiner Bennett: I shall sustain the objection as to other stores.

By Mr. Albert.

Q. Now, when your customers call for Louise Mulligan dresses, what are they told?

Mr. Cant: That is objected to, Mr. Examiner, on the ground that it is irrelevant and immaterial.

Mr. Albert: Then I ask the witness' testimony with respect to the fact that customers have called for those goods since the time of February 17th he stricken.

Examiner Bennett: Will you read the question, please?

(Previous question read by the reporter.)

Examiner Bennett: I will sustain the objection.

Mr. Albert: Exception. Has the Dayton Company given any instruction to its sales force as to the manner in which they are to handle the proposition that they haven't Louise Mulligan dresses?

9344

Mr. Haycraft: Objection, irrelevant and immaterial.

Mr. Cant: Same objection, if the Court please.

Examiner Bennett: The same.

Mr. Albert: Exception.

By Mr. Albert.

Q. What is there, Miss Cofield, that is so distinctly different about the Louise Mulligan dresses? A. One thing is pattern. They do not use a standard Bauman figure of a pattern or a standard junior pattern that other manufacturers use. They use their own measurements, which is a smaller waist line and differently cut dress. It fits different than any other dress that we carry in our stock from any other recognized manufacturer.

9345

Mr. Haycraft: What is that Bauman, capital P-u—

Mr. Albert: Capital B-a-u-m-a-n. Anything else?

The witness: They are very young clothes, I would say, what we call "tricky" clothes.

By Mr. Albert:

Q. Can you give us any more common name for it than "tricky," something that the layman would understand?

A. Well, they are different looking.

Q. Well, to you they are different looking? A. They are different looking to the customers.

Q. What would the ordinary person looking at them think? A. They are different looking because they are not—they do not look like any other New York merchandise.

Q. To the eye? A. That is right.

9347

Q. Would you say that to the untrained eye the design of those dresses was obviously different than the other dresses? A. I would say the make-up of the dresses was obviously different.

Q. That the model was different from the other dresses? A. (No response.)

Q. Is it your contention, Miss Cofield, that of a group, let us say of a dozen dresses, that might be hung up in a showroom, the average woman could walk in and take a look at the dresses and say that one is a Louise Mulligan dress? A. Not unless they were familiar with Louise Mulligan dresses.

Q. But, having once seen a Louise Mulligan dress, they could pick it out on a rack of dresses? A. I could not say everyone could. I would say some people could.

9348

Q. Would you say more than the average or less than the average? A. More than the average.

Q. The average woman could? A. Yes.

Q. Merely from looking at a rack of twelve dresses? A. That is right.

Q. What is it that the Guild manufacturers told you at the time you had this very friendly conversation with them? A. Well, they were regretting not being able to sell the Dayton Company because they felt we had done nothing except use the best tactics and had never done anything to them.

Q. Well, the Dayton Company hasn't done anything—

Mr. Haycraft: Let her finish her answer.

Mr. Albert: I knew what I was going to get, Mr. Haycraft.

The Witness: They were sorry, and that they regretted they could not sell us, as we regretted that we could not buy from them.

Mr. Albert: May I have the answer?

(Answer read.)

By Mr. Albert.

Q. Of course, they have lost the ability to sell you dresses, haven't they? A. They have lost what? 9350

Q. They have lost the ability to sell you dresses, when they do not sell them to you? A. They have lost the ability because they belong to an organization which has prohibited selling our store.

Q. Do you not mean that they have agreed not to sell your store? A. I would not say so.

Q. When they are unable to sell your store, they lose a profit, do they not? A. That is right.

Q. Did it ever occur to you to examine into the reasons why a manufacturer should abandon the possible profit on a sale of dresses to you in order to determine the relative gains that he might receive?

Mr. Cant: Objected to as argumentative, and irrelevant and immaterial. 9351

Mr. Albert: If it please the Court, Mr. Cant has no standing in this hearing with respect to the materiality and relevancy of any question. He is only here to protect the witness in regard to this highly elusive trade secrets that we have heard so much about since we have left the Atlantic seaboard.

Examiner Bennett: I think that is true. He has no standing. Read the question.

9352

Helen Cofield—For Commission—Cross.

(Question read.)

Mr. Haycraft: I think it is irrelevant and immaterial, objected to.

Examiner Bennett: Well, I think probably the witness is not competent to answer that question, not being a manufacturer, and not knowing.

Mr. Albert: If your Honor please, I think, with the background that has been laid in this case, this witness has been testifying to the effect and everything else, and if she wants to find out why her department is being injured, if she does not know, which I seriously question, because I think the witness knows exactly what the question is aimed at, should find out what it is necessary for her to do in order to get this merchandise.

Examiner Bennett: If you want that question—

Mr. Haycraft: She is tell you what she was told.

Mr. Albert: That is all I am asking her about.

Mr. Haycraft: That is all she knows about.

Examiner Bennett: I will let her answer, if she knows what it is.

Mr. Albert: May I ask counsel for the Dayton Company be requested not to prompt Mr. Haycraft in the objections he should make.

Examiner Bennett: I have nothing to do with that, if Mr. Haycraft wants to be prompted, that is up to him.

Mr. Albert: May I call your attention that Mr. Haycraft did not object until after Mr. Dayton objected.

Examiner Bennett: Well, go ahead. You may have your answer if there is any answer. Read the question.

(Question read.)

The Witness: My first answer would be, I don't believe he abandoned voluntarily selling us. He

9353

9354

belonged to an organization that, at the time they were selling us clothes, a controversy came up, he belonged to that organization and must abide by its rules. I don't believe any manufacturer voluntarily just did not sell the Dayton Company.

Q. Other manufacturers have resigned from the Guild, haven't they? A. What do you mean, other manufacturers besides the one I said?

Q. You testified to the fact that certain manufacturers have resigned from the Guild? A. That is right.

Q. And after their resignation from the Guild have sold you merchandise, that is right, isn't it? A. Yes.

Q. Certain other manufacturers have not resigned from the Guild? A. That is right.

Q. Isn't that so? A. That is right.

Q. And refused to sell you merchandise, isn't that so? A. I cannot say that they have refused, because we haven't asked them to sell us since the red carding, but it amounts to the same thing.

Q. So far as you know as regards the individual manufacturers is it your belief that they may sell you if you go to them and attempt to place an order? A. I could not answer what they might do.

Q. Well, as a matter of fact, as a result of your experience you know, in so far as the Guild manufacturers are concerned, they will not sell you until you sign the declaration of co-operation, isn't that so? A. Not completely, because we got a small amount of merchandise after the red carding from Guild houses.

Q. You mean that unfilled orders were delivered to you? A. No, sir.

Q. Who were the Guild houses that sold you the merchandise?

Mr. Haycraft: That is objected to.

9358

Helen Cofield—For Commission—Cross.

Mr. Cant: That is objected to, if the Court please.

Mr. Albert: Then I ask it all be stricken out.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I will ask the witness if there were any substantial sales of Guild merchandise after the red carding.

The Witness: I beg your pardon?

Examiner Bennett: I will ask the witness if there were any substantial sales to her department of Guild merchandise after the red carding, I mean where the orders were given after the red carding.

9359

The Witness: No great amount of merchandise, a small amount of merchandise.

Examiner Bennett: Oh, I think I will let the decision stand. It is a venomous proposition and I am not going into that.

By Mr. Albert.

Q. Did any of these manufacturers tell you under what circumstances they would sell you merchandise? A. Are you talking about all Guild manufacturers?

Q. Yes. A. No.

Q. Did you ask them when they might sell you merchandise? A. I didn't need to ask them. I knew that they—most of them would not do anything until the red card had been removed.

9360

Q. Did you make any inquiry to determine under what circumstances the red card would be removed? A. No, but I knew that we had to sign another agreement before the thing could be settled. At least, that was my impression.

Q. Didn't you know, as a matter of fact, that it was even unnecessary to sign a new agreement, that all that it was necessary for the Dayton Company to do was to signify its intention to protect styles?

Helen Cofield—For Commission—Cross.

9361

Mr. Haycraft: Objected to as irrelevant, actually contrary to the evidence in this case up to this time, also irrelevant and immaterial.

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

Q. Have you ever been to the California market before, Mrs. Cofield? A. I testified twice.

Q. Had you ever been there before that? A. No, sir.

Q. Have any of your buyers been to the California market?

Mr. Haycraft: Objected to.

9362

By Mr. Albert.

Q. (Continuing) If you know?

Mr. Haycraft: Nothing to show—that is objected to unless the question is confined to her department.

Mr. Albert: If you know.

Examiner Bennett: You may answer if you know.

The Witness: Will you repeat the question, please?

(The question was read.)

The Witness: Yes.

By Mr. Albert.

9363

Q. As a matter of fact, you have a Los Angeles office, haven't you? A. Yes, sir.

Q. Well, now, how far ahead in the lower priced part of your department, how far has it gone ahead over last year? A. I don't know.

Q. It went ahead, though, definitely, didn't it? A. I don't believe so.

9364

Helen Cofield—For Commission—Cross.

Q. Did it fall behind? A. No, I think it was about the same.

Q. Just about the same? A. You are talking about lower priced retails?

Q. Yes. A. That is right. I think I testified earlier to that, that we hadn't lost any business.

Q. Yes. A. On lower priced—I don't believe we have gained much business. I think it is just about the same.

Q. So that your ability to obtain a complete market in the lower priced dresses did not help your lower priced department?

Mr. Haycraft: Objected to.

9365

Examiner Bennett: Well, I will let her answer.

The Witness: Oh, at least we maintained our business.

By Mr. Albert.

Q. You maintained it? A. That is right.

Q. So that in so far as your lower priced dresses in the department were concerned, carrying a complete line of merchandise from anybody that you wanted to purchase from, the department did no better after the red carding than it had done before the red carding; is that your testimony? A. Right.

Q. Now, Mrs. Cofield, the Louise Mulligan line is confined to the Dayton Company—was it not? A. Yes.

9366 Q. For how long a period of time was it to be confined? was there any written agreement with respect thereto? A. No.

Q. So that you had no legal right to insist upon a continuance of the confinement, had you?

Mr. Haycraft: That is objected to. The witness is not a lawyer.

Examiner Bennett: Read the question, please.
(The question was read.)

Examiner Bennett: Well, I will sustain the objection.

By Mr. Albert.

Q. Is there anything, in so far as you know, in the relationship between the Dayton Company and Louise Mulligan, that would have prevented or that does prevent Louise Mulligan Company from confining that style to any other retailer in Minneapolis aside from the Dayton Company for the coming season?

Mr. Haycraft: That is objected to.

Mr. Cant: The Dayton Company objects to that.

9368

By Mr. Albert.

Q. ~~Were there any store conferences with respect to Dayton's policy in connection with the Guild program?~~

Mr. Haycraft: What is that question?

By Mr. Albert.

Q. (Continuing) Up to the date of red carding, Mrs. Cofield?

Mr. Haycraft: What is that question?

(The question was read.)

Mr. Haycraft: That is objected to as immaterial, improper cross-examination.

Mr. Albert: Foundation question, your Honor.

9369

Examiner Bennett: You may answer if you participated.

The Witness: Yes. We were instructed to observe all the agreements of the Guild situations.

By Mr. Albert.

Q. Were there any conferences in the Dayton Company store— A. Mr. Donovan—

Q. (Continuing) —prior to the red card? A. Mr. Donovan had meetings in his office with the buyers on the floor, instructing us to observe all the Guild—.

Q. When? A. About a year ago last June or July.

Q. Is that the last time you had any conference with Mr. Donovan with respect to the observance or non-observance of Guild policy? A. I am sure we discussed it further than that, but that particuar time it was over stamping our orders and being sure to observe the rules of the Guild agreement.

Q. Was there any general conference of any kind prior to the red carding, let us say in the months of November or December or January of 1936? A. No.

9371

Q. None whatsoever that you know of? A. Not, that I know of?

Q. Is the first that you knew of the fact that the Dayton Company had been red carded your inability to obtain merchandise from Guild manufacturers? A. No, I don't believe so. I believe my first knowledge was through our office or through "Women's Wear."

Q. When? A. About February 17th.

Q. Prior to the time that you had learned of the red carding, had you been in any way informed by the Dayton Company, through its executives or your superiors, that the Dayton Company was no longer going to co-operate with the Fashion Originators Guild? A. No, sir.

9372

Q. So that the first inkling that you had of any red card is when you were told of the accomplished fact of the red carding; is that so? A. To my knowledge, it is.

Q. Do you know whether or not any other buyers had been in any way forewarned with respect to the market or any other matter? A. That I can't answer.

Q. Beg your pardon? A. That I can't answer because I don't know.

Q. Mrs. Cofield, with respect to these manufacturers who resigned from the Guild—withdrawn. Mrs. Cofield,

will you please tell us what Guild manufacturers you had conversation with that you were referring to when you said that they were decidedly friendly? A. I didn't—there was a conference with the manufacturers that I saw that were friendly and that were regretting the inability to sell us, were practically all on the list that were Guild.

Q. All on the list of the Guild? A. Were all the Guild members, Junior Guild members.

Q. Was that Louise Mulligan? A. Included, yes.

Q. Who in Louise Mulligan did you speak with? A. Mr. Gisnet.

Q. Didn't he as a matter of fact tell you that as a result of his being released from the necessity of confining his business to the Dayton Company he has sold more goods in Minneapolis than what he has ever sold before? A. He did not.

9374

Q. Don't you know from your examination of the market and from your investigations that as a matter of fact Louise Mulligan has sold more goods in Minneapolis as a result of being released from his confinement than they ever did before? A. Mr. Albert, if you will let me answer that question in my own way, I can tell you exactly what happened.

Q. Well— A. In the first place, Mr. Gisnet, the Louise Mulligan line was kept out of Minneapolis all spring in the hopes of a settlement of this thing so that they could sell us.

Q. Quite right. A. They didn't want to ally themselves with any other store in the hopes—they would rather sacrifice their spring business in Minneapolis rather than to sell another store and get tied up so that they couldn't come back and be confined to the Dayton Company.

9375

Q. And wasn't that—

Mr. Haycraft: Just a moment.

The Witness: I am not finished, Mr. Albert.

9376

*Helen Cofield—For Commission—Cross.**By Mr. Albert.*

Q. I am sorry. Go ahead, A. Where was I?

(The record was read.)

A. (Continued) To the Dayton Company at the termination of this Guild controversy. Anything Mr. Gisnet said to me all spring was a decided indication that he wanted to come back and be confined, his merchandise be confined to the Dayton Company, and that he was decidedly disturbed at his loss of selling us.

Q. And Mr.— A. They have not sold—

9377

Q. And Louise Mulligan are still members of the Guild, aren't they? A. Yes, sir.

Q. And they are taking this loss that you speak of? And this being unable to sell the Dayton Company, aren't they? A. They haven't sold in Minneapolis until just now. I don't know what their fall experience is but they took a spring loss, yes.

Q. As a matter of fact, don't you know that they did make some sales in the spring? A. To my knowledge not. There was no advertisements on Louise Mulligan in Minneapolis at all this spring.

9378

Q. In other words, what you want to say is that Louise Mulligan in the ethical conduct of its business waited as long as possible to see whether or not Dayton's would protect the Louise Mulligan style which the Dayton Company wanted so much? A. My understanding is that they waited that long so as to be sure of the amount of business that they would get from Minneapolis because they knew from their experience with the Dayton Company that it had been a very profitable operation on both sides. We don't protect their styles, we sell their merchandise.

Q. What do you mean you don't protect their styles? A. Well, how can we protect the manufacturer's style? We buy merchandise to sell.

Q. Yes. And in all your experience with the Dayton Company during its co-operation with the Guild program you don't know how to protect style? A. That was not the question.

Q. You volunteered that you don't protect the style, Mrs. Cofield.

Mr. Haycraft: She did not. She was answering your question.

The Witness: I was answering your question. You asked me about protected style of Louise Mulligan.

By Mr. Albert.

9380

Q. Yes, and you said, "We don't protect the style." A. I don't see how their confining the line to us, when they are confining the line to us, it comes to protection of style.

Q. Quite true. But no matter how you sell the dress, whether it is by reason of confinement or merely by reason of the fact that you sold the dress with other retailers, isn't the objection that Louise Mulligan has to selling you at all, whether confined or not, the fact that you refused to protect the style? A. Ha, ha, ha! Well, your question said that they refused or objected to selling us, and my answer is that they haven't objected to selling us. They still want to sell us.

By Mr. Albert.

9381

Q. In other words, you say that because they are abiding by the Guild program in their agreement with the Guild, that that is the only reason that they won't sell you? A. It is the only reason, I am sure.

9382

Nellie D. Johnstone—For Commission—Direct.

NEILLIE D. JOHNSTONE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name, please?

The Witness: Mrs. Johnstone.

Mr. Albert: Is that with a "t"?

The Witness: Yes.

Direct examination by Mr. Haycraft.

Q. Will you tell your full name for the record? A. Mrs. Nellie D. Johnstone.

9383 Q. That last name is spelled, J-o-h-n-s-t-o-n-e? A. Right.

Q. Where do you live? A. 2517 Humboldt.

Q. Minneapolis? A. Minneapolis.

Q. What is your occupation? A. Department manager and buyer for the Dayton Company.

Q. What department are you manager of? A. I have two departments, the Model Shop and the Barbara Lee shop.

Q. Do they have numbers? A. 353 and 333 in the Model Shop.

Q. 333 and 353 in the Model Shop? A. Right. 354 and 334 in the Barbara Lee shop.

Q. What is the difference between those two shops? A. Price.

9384 Q. All right. Give us the price range of your Model Shop department. A. The Model Shop comprises women's and misses' and the price range is from 39.50 and up.

Q. How far up would you say? A. Well, we sold things in the fall seasons up to \$295.

Q. Well, that would be dresses or suits or coats? A. Costumes.

Q. Costumes? A. Yes, usually dresses up to 150.

Q. Now, the Barbara Lee. What is the price range of those two departments? A. From 19.75 to 39.50.

Nellie D. Johnstone—For Commission—Direct.

9385

Q. Now, how are those departments arranged at Dayton's? Just describe how they are arranged. A. They are classified under two heads, misses' and women's, under the same price classification.

Q. How are they displayed to the public? A. By our sales people.

Q. Are the dresses out so they can be inspected? A. No. In the Model Shop, none of our stock is displayed to the public, except on sale days, and that only in the Barbara Lee shop. Never in the Model Shop. Private selling.

Q. To what type of clientele would you say these four departments cater? A. I think they cater to the well-dressed, sophisticated woman, regardless of price, both departments. 9386

Q. How long have you been in charge of those departments? A. It will be three years the 15th of November, I think.

Q. That would be since November, 1933? A. Yes. No, that would be in 1932, wouldn't it?

Q. You say three years? A. No, that is right.

Q. Was it 1932? A. No, it was 1933.

Mr. Albert: As long as you start February 6, 1936, we are satisfied.

By Mr. Haycraft.

Q. What did you do before that, Mrs. Johnstone? A. I have always been in this business in Minneapolis for the last eighteen years. 9387

Q. Were you in business for yourself? A. Yes, previous to coming to the Dayton Company I was associated for a number of years with E. E. Atkinson, Young Quinlan, and I was a partner in the Jennie Lee, Incorporated.

Q. Before you came to Dayton's? A. Yes.

Q. So that all of your business experience has been in this type of merchandise? A. Yes, it has been.

9388

Nellie D. Johnstone—For Commission—Direct.

Q. How well acquainted did you become with the manufacturers of this type of merchandise? A. Very well acquainted with all of the better manufacturers.

Q. Are you familiar with the Fashion Originators Guild, Incorporated? A. Yes.

Q. When did you first learn of that organization? A. I don't remember.

Q. When you went to Dayton's did you know about it, had you heard of it then? A. I don't think so.

Q. Well, since you have been with Dayton's, what has been your contact, if any, with the Guild or its activities?

A. Well, of course, it is represented in most of the better houses.

9389

Mr. Albert: May I ask that the answer be stricken, your Honor, as not responsive.

Examiner Bennett: The question and answer, please.

(Previous question and answer read.)

A. I have had constant contact with them. Is that better?

Mr. Albert: It is a little better, Mrs. Johnstone.
The Witness: Thank you.

By Mr. Haycraft.

9390

Q. Well, in your department, since you have been with Dayton's, what percentage of the garments that you sell there would you say you bought from Guild manufacturers? A. Well, it varies in the two departments.

Q. Well, give us first the Model Shop, 353 and 333, say 1935, the fall of 1935. A. Well, I would say 90 per cent. of the Model Shop.

Q. What would you say about Barbara Lee? A. Well, 65, 60 or 65.

Mr. Albert: 50 or 55?

The Witness: 60 or 65.

Mr. Albert: What is that number of this department, is that 353 or 333?

Mr. Haycraft: 334 and 354.

The Witness: 354 and 334.

Mr. Albert: Would you mind straightening out the numbers of the departments? Which is the Barbara Lee?

The Witness: 354 and 334.

Mr. Albert: 334?

The Witness: Yes.

9392

By Mr. Haycraft.

Q. Would you testify now to the best of your ability as to the principal resources of your Department 353, pick out 333 first. What were the principal Guild resources, say in the fall of 1935, in Department 333? A. That is of the women's departments. Some of the most outstanding were A. Trainor, Matthew Kadetsky, which is, by the way, the only half-size better dress house in New York City, I mean better price, Ed Gerrick, there was Louise Barns Gallagher, and Herman Beispiel, those are outstanding, the bulk of our business, the better ones.

Q. Now, will you give the same information for Department 353? A. If I could look at my list, I would be a little better for you.

9393

Q. All right. A. I would not need to take so long. Put my glasses on. Well, M. Rentner is the most outstanding.

Q. Which? A. Maurice Rentner.

Q. All right. A. Louise Barns Gallagher, Milton Altmann, William Bass, J. B. Barnett, Henry Gang, Virginia Hume and Mary Lee, Ben Reid, Rothenberg, J. Rothenberg, and Rudolph Gowns, Straus Miller and Suttre Frocks.

9394

Nellie D. Johnstone—For Commission—Direct.

Q. Did you mention Eisenberg? A. I—

Q. Are they a resource of your department? A. Yes, very important, too.

Q. What is the cost price range of dresses sold in those two departments, 333 and 353? A. They are from 22.95 to 28.95, 29.95.

Q. Will you give us the same information for Department 334, the same information? A. The prices are from 19.75 to 39.50 in the women's department; one of our most outstanding resources, which we have lost, are Dolces. Dresses in the women's department.

Q. Dolces? A. Yes.

9395.

Q. Do you recall any others? A. Gans, Henry Gans.

Q. How about Joseph Greenberg? A. Joseph Greenberg is out of business.

Q. He was in business in 1935? A. Yes. I beg your pardon. He was important at that time.

Q. Will you give us the same information as to Department 354? A. Milton Altmann, Mary Lee, Charles Lang, Bender Hamburger, Capri, Casino, Fiegenbaum Adelson, A. Goodman, William Bass, did I mention him?

Q. No. How about Joseph Halpert? A. Very important but not perhaps as strong in our department.

Q. What was the cost price range, the same in this as in 354? A. No, 12.75 to 22.75.

Mr. Albert: That is 354?

9396

The Witness: Yes.

Mr. Albert: That is 354?

The Witness: Yes.

By Mr. Haycraft.

Q. Now, Mrs. Johnstone, do you recall when the Dayton store was red carded by the Guild? A. When?

Q. Yes. A. It was in February.

Q. Do you recall how that came to your attention? A. Yes: I was in California at the time and William Bass—

Mr. Albert: Wasn't there anybody at the Dayton store, Mr. Haycraft, when they were red carded?

Mr. Haycraft: I move that be stricken from the record and the witness be allowed to answer without the facetious remarks from the other side of the table.

Mr. Albert: There is nothing facetious about it; it is serious.

Mr. Haycraft: It has nothing to do with the issues in this case whether they were there. I suppose people have to buy goods as well as sell them. 9398

By Mr. Haycraft.

Q. Will you go ahead with your answer? A. William Bass' representative, young Mr. Hawkus, was the first one to tell me that the Dayton Company was red carded.

Q. Was any explanation given at the time? A. No. I was taking a taxi, and he just stuck his head in the door, no explanation, ha, ha.

Q. Did you try to confirm it in any way? A. No.

Mr. Albert: Would you mind speaking a little louder, Mrs. Johnstone?

The Witness: No. 9399

By Mr. Haycraft.

Q. You say you were in California at the time? A. Yes.

Q. Upon your return to Minneapolis did you make any attempt to obtain merchandise from the Guild manufacturers? A. Certainly.

9400

Nellie D. Johnstone—For Commission—Direct.

Q. What did you do in that respect? A. We made a trip to New York and interviewed most of them personally.

Q. Whom did you call on? A. We called on Milton Altmark, for one.

Q. Whom did you call on there? A. Mr. Altmark.

Mr. Albert: Who?

The Witness: Mr. Altmark.

By Mr. Haycraft.

Q. What did he tell you? A. Nothing he could do.

9401

Q. What did he explain? A. His kindly feeling and all that sort of thing, and he regretted, the clothes were ready for us, but it was impossible for him to ship them.

Q. Did he tell you why? A. Well, we knew the reason why. It was because of the—

Q. Because of what? A. Well, it was because he was a member of the organization that had red carded the various stores.

Q. Well, did you call on anybody else? A. What?

Q. Who else did you call on? A. Talked to Mr. Rentner.

Q. What did he tell you? A. Well, he regretted, too, the circumstances.

Q. Did he give you the same explanation or a different one? A. What?

9402

Q. What explanation did he give you? A. Well, he talked as to the merits, of course, of the organization, how he hoped that things would adjust themselves that we would stay with the org—with the F.O.G.A.

Q. Did you call on anybody else? A. Mary Lee.

Q. Whom did you talk with there? A. I think Miss Morris.

Q. What did she tell you? A. I remember going in the back and looking over the clothes that were still being

filled for the Dayton Company subject to settlement of the question.

Q. What did she say about it? A. Well, she, too, had the same feeling. She regretted that they weren't allowed, wouldn't ship, but possibly something could happen so that this thing could be adjusted and things would straighten themselves out.

Q. Who else did you call on? A. Dolces.

Q. Who did you talk with there? A. I think Mr. Altman.

Q. What did he tell you? A. Well, the same thing, couldn't ship anything, couldn't even accept re-orders. We had things on re-order there at that place and special orders coming through that they couldn't ship us.

9404

Q. What did you do then after you made the rounds of the Guild manufacturers? A. Well, we went searching for merchandise. We spent days trying to get it, what we had already bought shipped to us.

Q. Did you finally succeed? A. Yes; that boycott was finally lifted, that is, they allowed the manufacturers that had the merchandise made up to ship it.

Q. Did they allow you to place any more re-orders? A. No.

Q. Or special orders? A. No.

Q. Well, then, what did you do? A. We have been working ever since.

Q. Have you had any success? A. Ha, ha, it has been most difficult in the Model Shop, the better clothes, the better priced clothes.

9405

Q. Have you been able to replace any of the merchandise of any manufacturers that were buying from the Guild? A. That were buying from the Guild, manufacturers in the Model Shop, no.

Q. Have you made strenuous efforts to do so? A. To the best of my ability.

9406

Nellie D. Johnstone—For Commission—Direct.

Mr. Albert: That is objected to, if it please the Court, as calling for a conclusion of the witness, and leading as to whether or not she made strenuous efforts.

Examiner Bennett: Overruled.

Mr. Albert: Exception.. The question was answered.

By Mr. Haycraft.

Q. As to the Barbara Lee shop, what success have you met with? A. We have had more success in the Barbara Lee shop.

9407 Q. Are there any manufacturers of garments of any manufacturers in that shop which you have not been able to replace? A. Yes.

Q. Which ones? A. Dolces, for one.

Q. Any others? A. Capri.

Q. Can you think of any more? A. Casino, Fleigenbaum-Edelson, Henry Ganz.

Q. Now you said that you did get the orders that had been placed but you were unable to get re-orders? Special orders? A. Yes, after—well.

Q. After you—I want you to direct your testimony now to the spring of 1936 and testify as to the effect that the inability to get goods from the Guild manufacturers had upon the department under your supervision.

9408

Mr. Albert: That is objected to, no proper foundation has been laid.

By Mr. Haycraft.

Q. Do you have an opinion, Mrs. Johnstone, as to the effect of your inability to get Guild merchandise, the effect it had upon your departments in the spring of 1936?

Mr. Albert: That is objected to, immaterial, no foundation has been laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: You may answer.

The Witness: Well, always in the spring of the year it is less difficult to suit the public with less expensive merchandise. I mean, in the spring of the year people don't pay the price for clothes. They are not as interested in high-priced merchandise. Therefore, we have been able to—we haven't missed them as much in the spring season as we would in the fall, which is more important.

9410

By Mr. Haycraft.

Q. What is the situation with respect to the fall? A. Well, it is discouraging.

Mr. Albert: To whom, Mrs. Johnstone?

The Witness: Well, I am afraid for the Dayton Company, ha, ha.

By Mr. Haycraft.

Q. Discouraging in what way? A. Well, we have been unable to round out our stocks. We have not been able to please our customers for the type and kind of price that they want to pay. There is such a big gap in our resources that—in our stocks—it certainly reflects itself in just that manner and our customers are quick to realize it both in types and in price.

9411

Q. Have you observed anything along with respect to that situation in your contact— A. With the public?

Q. Yes. A. Indeed.

Q. Can you give me some illustrations of that? A. Well, it seems to be generally known that the Dayton Company have been—their better resources are limited,

9412

Nellie D. Johnstone—For Commission—Direct.

see, and customers notice. That is one thing. Even though they come to our shop and don't find just—we had a customer in this morning, a very important customer from St. Paul whom we clothed, likes our clothes. She met me before I went to New York. She said, "Mrs. Johnstone, if you will go to that manufacturer that made those gorgeous clothes for me last fall, that is the kind I want." She came back this morning and she sent word to me, asking me if I bought clothes of A. Traina. She didn't know A. Traina, but that is who it was.

Q. What did you have to tell her? A. Why, I told her I had bought some very nice things—but—

9413

Q. Have you any other instance of that kind or is that an isolated case? A. Well, there might—our clothes last fall were very wonderfully accepted both from Rentner, Louise Barnes Gallagher, costumes, and we have not been able to replace them. Last week there were three customers walked out of the Dayton Company and bought suits on the avenue from \$135 to \$175, our customers, personal customers.

Q. Has this shown any effect upon the volume of your sales? A. Why, naturally.

Q. What effect has it had? A. Well, in figures?

Q. If you have any way of giving it.

Mr. Albert: Just say very bad, Mrs. Johnstone.
The Witness: Very bad.

9414

Mr. Haycraft: Mr. Examiner, may I be allowed to conduct the examination without being interrupted?

Examiner Bennett: All right, go ahead.

By Mr. Haycraft.

Q. Have you made any study or comparison with your volume of sales last year and this year in your department? A. I just came home this morning. I haven't checked them.

Q. Will you do it— A. We were behind when we left.

Q. Mrs. Johnstone, do you have an opinion as to what the effect would be on your departments if you are still unable to get Guild merchandise in the future? A. Well, it would change our clientele.

Q. What do you mean by that? A. Well, we would not be able to satisfy them unless the resources, new resources spring up that we have no reason for feeling they will.

Q. Have you just recently been engaged in looking for new resources? A. I certainly have.

Q. Where did you go? A. Well, everywhere.

Q. Yes. A. Everywhere in New York that I could be directed to, to find merchandise that might substitute the Guild houses. 9416

Q. Did you find any? A. No, not a great many.

Q. Mrs. Johnstone, has the inability to get good merchandise had any effect upon the morale of the personnel of your department? A. Serious.

Q. Will you explain how, in what way? A. Well, each of the sales people in these two departments have a direct following of customers. They have their own clientele. They are girls that work into that. It means the success of our department, and my very best sales person this week, or since I came home, has told me her failures to sell so and so, so and so, customers that she always has been successful with, and, you see, they can't help but realize that they are key merchants, see the difference in the grouping of merchandise, or the selection, rather, I mean. 9417

Q. Does the limited selection that you refer to have any effect upon your ability to sell garments in your department? A. Yes.

Q. Why is that true? A. Well, as I said before, the public is educated to— There is a high class something about a well made garment that is just the difference be-

9418 *Nellie D. Johnstone—For Commission—Direct—Cross.*

tween an amateur production and a finished product, like men's tailored suits, for instance. It is the same thing. There is a something that goes into tailoring and workmanship and quality of materials, an expression of style that round out a garment, that a fastidious customer appreciates. It is just something that sometimes is indescribable, but it marks that smart suit or dress.

Mr. Haycraft: That is all, Mrs. Johnstone.

Cross-examination by Mr. Albert.

9419 Q. Mrs. Johnstone, would you mind telling me again, please, the percentage of Guild merchandise which you had in Department 333? A. Well, I couldn't tell you exactly.

Q. Approximately? A. The two departments are considered together.

Q. 333 and 353? A. Yes.

Q. What is the percentage there? A. About 90 per cent.

Q. 90? A. Yes.

Q. How about 334 and 354? A. I would say the same, about 60 per cent.

Q. What is the price line in 333 and 353? A. \$39.50 to \$295.

Q. What is the low price? A. \$39.75.

9420 Q. Do you want to amend your statement, then, to Mr. Haycraft, that it was \$22.95 up?

Mr. Haycraft: She didn't say \$22.95 for that department.

The Witness: That is cost in that department.

By Mr. Albert.

Q. Then \$39.50 is the retail price and \$22— A. That is right.

Q. \$22.95 is the cost price? A. \$22.75.

Q. Yes. A. Yes.

Q. And in Department 354 what is the cost price? A. The same price ranges.

Q. You mean from— A. Oh, no. In 354? I beg your pardon. They are from \$12.75.

Q. Is that cost price? A. Cost price, \$12.75 to \$22.75.

Q. And what is the retail price? A. \$19.75 to \$39.75.

Q. So that your \$12.75 dresses sell for \$19.75? A. Some of them.

Q. Approximately? I mean on the average? A. \$22 that would be. They are usually marked \$22, some for specials that runs in at \$19.75.

Q. Of course, there is a discount on your \$12.75 cost price? A. Yes.

Q. Is there not? A. Uh huh.

Q. When you called upon Milton Altmark what did he tell you about not selling you dresses? A. He said, "We have every one of them back there waiting to be shipped to you but we can't ship them."

Q. Did he tell you why he couldn't ship them? A. Well, because of his organization wouldn't permit, I think was his reason.

Q. Did he tell you why the organization wouldn't permit it? A. No.

Q. Didn't you ask him why it is that the organization wouldn't permit him? A. I don't remember.

Q. Well, you had been in California, hadn't you, when this red carding took place? A. Uh huh.

Q. Naturally, you don't know the events leading up to it? You didn't know the events leading up to it at that time? A. Only that the papers were filled with it.

Q. The papers were filled with it? A. Yes.

Q. What did you learn from the papers? A. The women's ready—women's wear. We learned that the

9424

Nellie D. Johnstone—For Commission—Cross.

F.O.G.A. were not allowed to ship merchandise to the following red carded stores.

Q. Did you learn why they were not? A. Well, it had to do with copying for one thing, I suppose.

Q. What do you mean when you say it had to do with copying? A. Copying models.

Q. What do you mean when you say it had to do with copying models? A. Well, I do not understand what you are trying to find out.

Q. Red carding is a result, is it not? A. Yes.

Q. Now, do you know what caused that result? A. No.

Q. You do not know? A. Well, I don't know all the ins and outs of the F.O.G.A.

9425

Q. What did you learn as to it as far as— What is your opinion of it?

Mr. Haycraft: Objected to.

By Mr. Albert.

Q. What did you learn as buyer in the Dayton store as to the reason for the red carding? A. Well, there were many reasons, I don't know.

Q. Let me have half a dozen of the many reasons.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

9426

Mr. Albert: May it please the Court, the testimony has been given here that these buyers are responsible for almost everything that can be imagined in any way in their department. One witness has testified that there is nothing that he knows of that a buyer is not responsible for, and those were the recorded remarks of Mr. Dayton, who was here to-day. I am asking this department buyer if she knows what she is supposed to know about her department.

Nellie D. Johnstone—For Commission—Cross.

9427

Mr. Haycraft: Objected to as irrelevant and immaterial.

Examiner Bennett: Give me the question.

(Previous question read.)

Examiner Bennett: I will let her answer. Overruled.

The Witness: I don't know.

By Mr. Albert.

Q. Then, Mrs. Johnstone, your testimony that after being in charge of these departments, 333, 353, 334 and 354 for the past three or four years, which departments you are completely responsible for, and which you say have been injured by a certain action of somebody, that you do not know what caused that action? A. I do not know all the reasons that caused this action. 9428

Q. Well, give me one reason that you know.

Mr. Haycraft: That is objected to. She has not shown that she knows any.

Examiner Bennett: I will let her answer, if she knows. I do not know that she knows any.

Mr. Albert: Quite contrary, your Honor.

The Witness: I have really never discussed it.

By Mr. Albert.

Q. Now, Mrs. Johnstone, you have said that you know some of the reasons, you do not know them all; now, will you please give me one reason that you know as to the existence of the state of affairs with respect to the Dayton Company and the F.O.G.A. and the Guild members? 9429

Mr. Haycraft: Object to that question as not proper cross-examination, immaterial, irrelevant, no foundation has been laid.

Examiner Bennett: Objection overruled. You may answer if you know any.

9430

Nellie D. Johnstone—For Commission—Cross.

Mr. Haycraft: That is, if she knows. She has not said she knows.

The Witness: I really do not know.

By Mr. Albert.

Q. Then, you do not know of any reason why the Dayton Company was red carded? A. No, I don't. I don't think the Dayton Company deserved to be red carded.

Q. Why didn't the Dayton Company deserve to be red carded? A. I don't know.

Q. Well, now, Mrs. Johnstone, you predicate your opinion upon knowledge of some kind, don't you, or is the fact that you do not think the Dayton Company deserved to be red carded, due solely to your loyalty to the company? A. No, it is not that.

Q. All right. Now, upon what do you predicate your opinion that the Dayton Company did not deserve to be red carded? A. Well, that is between the Dayton Company and the F.O.C.A. I do not really know.

Q. Then, when you say that the Dayton Company did not deserve to be red carded, you do not know why they did not deserve to be red carded? A. Well, I think it is a surprise.

Q. What is a surprise? A. It was a surprise to me, I have said.

Q. Haven't you made any inquiry since the red carding to determine why the Dayton Company was red carded? A. I only knew it to be a fact.

Q. And aside from the fact that you know that the Dayton Company was red carded, you, in your position as a buyer, for these four departments, in complete supervision thereof and with complete responsibility for the success or failure of those departments, do not know to-day why the Dayton Company was red carded? A. No.

Q. And you have made no attempt to inquire? A. That is—

Q. Will you answer the question, please? A. (Short pause) I do not know.

Q. And I ask you if you have made no attempt to inquire in order to alleviate the condition of the department for which you are responsible, as to the reason why the Dayton Company was red carded?

Mr. Haycraft: I object to that question.

The Witness: No.

Mr. Haycraft: There is nothing to show that there is any responsibility on the part of this witness as to the reason they were red carded. I do not think there is any foundation laid.

Mr. Albert: Mr. Dayton is here and will he deny the testimony of the witnesses that he did not know anything that a buyer was not responsible for in his department?

9434

Mr. Haycraft: Are you trying to stage a show around here?

Examiner Bennett: This witness does not seem to now, and I guess that is hardly worth while to try to get that information from a witness who does not know.

By Mr. Albert:

Q. Is it your testimony, then, that you did not ask Milton Altmark as to why the Dayton Company had been red carded?

9435

Mr. Haycraft: She didn't say that.

Mr. Albert: I am asking her if she did.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I will let her answer.
Overruled!

Mr. Haycraft: She answered it once.

9436

Nellie D. Johnstone—For Commission—Cross.

Examiner Bennett: I think the witness answered it already.

Mr. Albert: Very well.

By Mr. Albert.

Q. As a matter of fact, Mrs. Johnstone, didn't Mr. Altmark tell you that the red carding of the Dayton Company was wholly the Dayton Company's fault? A. No.

Q. Didn't he tell you that the red carding of the Dayton Company was the result of the Dayton Company's own actions? A. (The witness shook her head negatively.) I do not remember that.

9437

Q. Do you know who Maurice Rentner is? A. Yes.

Q. Who is he? A. He is one of the leading manufacturers in New York City.

Q. What is his connection with the Fashion Originators Guild? A. He is president.

Q. Was he such at the time that you spoke with him? A. He must have been.

Q. And he still is, to-day, is he not? A. I think so.

Q. Did you ask Mr. Rentner, the president of the Fashion Originators Guild, why it is that the Dayton Company was red carded at that time? A. No.

Q. Did he tell you? A. I don't remember that he did.

Q. Do you mean by that that you do not remember whether he did or not, or that he did not tell you? A. I don't remember.

9438

Q. Well, will you bear with me for just a moment, Mrs. Johnstone? A. Yes.

Q. I would like to understand your testimony. Is it your testimony that Mr. Rentner may have told you why and you have forgotten, or is it your testimony that he did not tell you at all? A. I do not remember relative to it at all.

Q. That is, he may have told you but you have forgotten, is that what you mean? A. We talked with him.

Q. Do you not recall whether Mr. Rentner mentioned in any respect the reason why the Dayton Company was red carded? A. No, we were just one of the group of stores.

Q. He told you nothing as to the reasons why you were red carded? A. He regretted it.

Q. Every manufacturer regrets his inability to sell a customer, doesn't he? A. I think so.

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. Did he tell you why he regretted it? A. I do not remember.

Q. Didn't he tell you that he regretted the policy of the Dayton Company in not protecting his styles? A. He would have no reason for making that remark.

Q. Why would he have no reason? A. He just stopped working for the Dayton Company.

Q. Up to when? A. As long as we had them.

Q. When was that? A. At this time. We have never had any since.

Q. Or consultations had with you? A. What?

Q. Did you know of the telegram which was sent by the Fashion Originators Guild asking whether or not the Dayton Company subscribed to a certain letter submitted by Mr. Riley? A. I never saw it.

Q. Then you know nothing as to why the red carding was imposed on the Dayton Company?

Mr. Haycraft: The witness has already said so.

The Witness: No.

Mr. Haycraft: I object to it. It has already been answered.

Examiner Bennett: I will sustain the objection to anything further in this line. You are not developing anything.

9442

*Nellie D. Johnstone—For Commission—Cross.**By Mr. Albert.*

Q. What is it that a well-dressed sophisticated woman wants in a dress when she comes into your department?

A. She wants quality, wearable clothes, an expression of the style which is becoming to her particular need, her particular type, rather; I think that covers it.

Q. Can you say which of those three is the most important to your customer?

Mr. Haycraft: That is objected to, assuming need of the three.

9443

Mr. Albert: Now, with the assistance of Mr. Haycraft, can you answer?

Mr. Haycraft: No foundation laid for the question. If counsel will place a proper question, it will not be necessary to object to it.

Examiner Bennett: I will let her answer. Overruled.

The Witness: Will you state the question?

Examiner Bennett: Read the question.

(Question read.)

By Mr. Albert.

9444

Q. You have mentioned quality, wearability and expression of style as the three points that your well-dressed sophisticated woman looks for when she purchases a dress in your department. A. Wearability.

Q. And wearability is the first thing that she looks for? A. Yes.

Q. She does not look for the dress to fit her? A. Certainly; it would not be wearable if it did not fit her.

Q. And if wearability depends solely upon its ability to fit her? A. Not altogether.

Q. Well, is there anything in addition to the fit that you put in in wearability? A. Well, all the qualifications

that go into a well-made garment. There are many that you might describe.

Q. Wouldn't you say that wearability and quality are almost synonymous? A. No.

Q. Why not? A. Well, many things that haven't a great deal of quality are wearable.

Q. Are not wearable? A. They are wearable, but you said the sophisticated, well-dressed woman.

Q. How many dresses a year would you say the well-dressed, sophisticated woman buys in your department? A. That is limited.

Q. What? A. That is limited to her financial circumstances. She might be well-dressed and very sophisticated and get along on very few clothes.

Q. Well, didn't you testify with respect to these departments, most of your customers, who purchased these dresses therefrom, were not particularly interested in the price? A. I didn't mean to infer that altogether.

Q. What did you mean to infer? A. Well, clothes under \$100 are not expensive, terribly expensive.

Q. No? Well, now, as a matter of fact, Mrs. Johnstone, is it not true, in your experience, that the woman who purchases dresses in that price line, by reason of her experience in having purchased dresses in that price line, takes it for granted and knows, first, that the dresses in that price line will be wearable, second, that they will be of a very high quality, and that the only thing she has to look for when she goes into that department, aside from the incidental of getting a dress of the proper size, is something that is a sufficient expression of the style which she can wear?

Mr. Haycraft: I object to the question, Mr. Examiner.

Examiner Bennett: I will let her answer, if she can. Do you want the question read again, or do you understand it?

9448

Nellie D. Johnstone—For Commission—Cross.

The Witness: Well, each customer, of course, demands a different type of clothes. Some look for style, some for quality. I mean, quality may happen to govern one person; price may govern another, who is not the judge so much of the merchandise as the fact she is willing to pay. There is a difference.

9449

Q. Tell me this, Mrs. Johnstone, in your department in this class of well-dressed, sophisticated women, are there any women, aside from a negligible number, who will purchase a dress, the quality of which satisfies them and the wearability of which satisfies them, but which does not reflect the expression of style suitable to their particular, shall I say, personality, physique, or anything else that you want to take into consideration in the question?

Mr. Haycraft: That is objected to as too indefinite and complicated. He says, "Anyone aside from a very few."

Examiner Bennett: Will you read the question? (Question read.)

Examiner Bennett: I will let you answer the question, if you can. Overruled.

The Witness: Yes, I think they do, sometimes.

By Mr. Albert.

9450

Q. Sometimes? A. Yes.

Q. Would you say that it is very often? A. No.

Q. Let me put it this way: Is it not a fact that before you can make a sale in those departments as the ultimate thing, that you must place in your customers, you must be able to give them the expression of style in the dress that will suit them? A. Certainly, that is our aim.

Q. Now, you stated that these dresses were not displayed, did you not? A. Well, they are kept in cases, and

perhaps a few outstanding dresses on the floor, new things, usually, but the stock is not displayed to customers except in sitting rooms.

Q. After a woman comes in and tells you the size dress she wears, so that you can bring out something you can fit her with, what is it that a woman asks for when he comes into your department for a dress? A. She usually states her needs, what she is looking for, type of dress, perhaps give you some inkling of what she would like to find.

Q. How did she describe it? Did she describe it by— A. Well, she may say she wants something to wear to a luncheon, or she might say she wants a black dress, or she might say she is looking for a dinner type or evening. She makes some—

Q. And then, when your sales people get the dresses, and I believe you have described them as keen merchants, do they bring out dresses which they believe are the expression of style of this particular customer? A. They bring what they feel is suitable and as near the customer's demand as possible, especially first showings.

Q. In other words, they want to impress the customer immediately that Dayton Company carries dresses which express the style of this customer, is that not so? A. Yes, suitability.

AFTERNOON SESSION—2 P. M.

Examiner Bennett: Come to order, please.

Mr. Albert: If your Honor please, this morning I believe I made a remark—I don't know whether the reporter got it or not, there was a lot of discussion—about wishing to put Mrs. McDonald on the stand in New York.

Examiner Bennett: Yes.

9454

Virginia C. McDonald—For Commission—Cross.

Mr. Albert: The reason for that was that we understood last night that she had certain records out at Lake Minnetonka, about thirty miles out, which she had not been able to get. I was afraid if Mr. Haycraft insisted we would have to remain in Minneapolis while she went out, but Mrs. McDonald tells me this morning that she discovered that she brought those records in with her when she moved and she was able to look at them.

Cross-examination by Mr. Albert (continued).

9455

Q. Now, Mrs. McDonald, you were requested by Mr. Haycraft to bring in certain papers. Will you examine your files for them? A. Yes, I did.

Q. I think you were asked to bring in blank forms that you used as a shopper? A. Yes.

Q. Did you bring those with you? A. Yes.

Q. Have you them with you? A. They are in the brief case.

Q. You have the forms that you used? A. Yes, I do have them. Do you want to see them all?

Q. Well, if they are different.

(Paper writings referred to were handed to Mr. Albert.)

9456

(The papers referred to were marked Respondents' Exhibits 65, 66, 67-A, B and C, and 68-A, B and C for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibits 68-A, B and C and ask you what these sheets are. A. These are from my daily reports on my shopping.

Q. What do you report on those sheets? A. I report how many copies I have found.

Q. You filled in the blanks on these sheets, is that it?

A. Yes. I send these two, the pink and white, to New York.

Q. You mean Respondents' Exhibit 68-A and 68-B, you send to New York? A. Yes.

Q. The yellow one you keep? A. Yes.

Mr. Albert: I offer these in evidence.

Examiner Bennett: Received.

(The reports referred to, heretofore marked for identification Respondents' Exhibits 68-A, B and C were received in evidence.)

By Mr. Albert.

9458

Q. I show you Respondents' Exhibit 65 and ask you what that paper represents. A. This is a Piracy Committee report.

Q. And what information is contained or put into that report? A. Well, if I hold a Piracy Committee report, it is put on here.

Q. You mean a Piracy Committee meeting? A. Meeting, I mean.

Q. And the results of that meeting are set forth in this report? A. Yes, sir.

Q. And sent to New York? A. Yes.

Examiner Bennett: That is 65?

Mr. Albert: Yes, your Honor. I offer in evidence Respondents' Exhibit 65, if the Commission wants it.

9459

Mr. Haycraft: No objection.

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Respondents' Exhibit 65, was received in evidence.)

9460

*Virginia C. McDonald—For Commission—Cross.**By Mr. Albert.*

Q. I show you Respondents' Exhibit 66 and ask you what that represents. A. That is the report of the refusal or the failure to co-operate.

Q. You mean by that, where a retailer has refused to return copies? A. (Witness nods head affirmatively.)

Q. Or has refused to acknowledge that he will protect copies, then you make out a report on this sheet and sent it to New York? A. Yes.

Mr. Albert: I offer Respondents' Exhibit 66.

Examiner Bennett: Received.

9461

(The document referred to, heretofore marked for identification Respondents' Exhibit 66, was received in evidence.)

Q. I show you Respondents' Exhibit 67-A and ask you what that represents. A. Well, this I use when I find reports. I make out this slip and I send the green—

Mr. Haycraft: You send copies, you mean?

When you find copies?

The Witness: Yes, when I find them. I send the green to New York, give the white to the buyer or merchandise man or whoever man I have contacted, and I keep for myself this tissue, which is right in my little book there.

9462

Mr. Haycraft: That stays in the book; does it not?

The Witness: Yes, it does.

By Mr. Albert.

Q. Then, you send Respondents' Exhibit 67-A and 67-C? A. No; I send 67-C to New York; I give this to the buyer or merchandise man.

Q. By "this" you mean Respondents' Exhibit 67-A? A. Yes.

Q. And you yourself keep Respondents' Exhibit 67-B?

A. Yes.

Mr. Albert: I offer in evidence Respondents' Exhibits 67-A, B and C.

Mr. Haycraft: No objection.

Examiner Bennett: Received.

(The documents referred to, heretofore marked for identification Respondents' Exhibits 67-A, B and C, were received in evidence.)

By Mr. Albert.

Q. Now, Mrs. McDonald, you were asked to bring in a certain letter which has been referred to by you as being received from Mr. Goldstein? A. Yes.

9464

Q. Were you able to find that letter in your files? A. I was not able to find the one you referred to.

Mr. Albert: Will you mark this?

(The document referred to was marked Respondents' Exhibit 69 for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibit 69 and ask you what that is. A. This refers to the letter I mentioned yesterday. Should I explain it?

Q. You can't explain it yet. Now, I notice that in this letter, in Respondents' Exhibit 69, a certain letter of March 5th is referred to. A. Yes.

9465

Q. Is that the letter that you had reference to yesterday when you spoke of a letter from Mr. Goldstein? A. Yes.

Q. And does this—

Mr. Haycraft: May I ask how you know that, Mrs. McDonald?

9466

Virginia C. McDonald—For Commission—Cross.

Examiner Bennett: I didn't get that.

Mr. Haycraft: How do you know that that is the letter if you haven't seen it, haven't got it, couldn't find it?

The Witness: I couldn't find it, but I do believe that this is referring to that letter.

Mr. Haycraft: You believe it but you don't really know it?

The Witness: No, I am not certain.

By Mr. Albert.

Q. Between the time that the letter referred to here as
9467 March 5th and April 2nd, is that the time you were not shopping for basements?

Mr. Haycraft: I object to that, Mr. Examiner.

By Mr. Albert.

Q. Is that a letter received by you from Mr. Goldstein in the regular course of business of the F.O.G.A.? A. Yes.

Q. And it was received by you after April 2, 1936? A. Yes.

Q. It was mailed to you? A. Yes.

Mr. Albert: I offer this letter in evidence:

Mr. Haycraft: That is objected to.

Examiner Bennett: Let me see the letter;
9468 please.

(The letter referred to was handed to the Examiner.)

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Respondents' Exhibit 69, was received in evidence.)

By Mr. Albert.

Q. Is the letter of March 5th referred to in Respondents' Exhibit 69, the letter that you had reference to as being the letter from Mr. Goldstein?

Mr. Haycraft: She has already answered that.

The Witness: Yes.

Examiner Bennett: I will let her answer.

By Mr. Albert:

Q. And is it during that period, during the period of time covered by these letters that you had reference to yesterday, when you were not shopping the basement? A. 9470
Yes.

Q. After the receipt of this letter what did you do with respect to basement and cheaper merchandise? A. I shopped the basement in the cheaper merchandise.

c Mr. Albert: That is all.

Redirect examination by Mr. Haycraft.

Q. For how long a period of time did you do that? A. Well, I shopped from until around June, and, understand, that when summer merchandise comes in the basement carries very low cost dresses, and that low cost copies that I might find are in these sports shops and other better stores during the summer. The merchandise is different priced. 9471

Q. Well, there were copies in the basement, weren't there, when you shopped? When you shopped did you find any copies the last time you shopped the basement?

A. In the basement?

Q. Yes. A. Yes, I think I did.

Q. Well, who told you to stop shopping in June? A. Nobody told me to stop shopping in June.

9472

Virginia C. McDonald—For Commission—Redirect.

Q. You did that of your own accord? A. Well, I did it after looking through the basements and seeing dresses at 2.95 and a dollar and a half, I would not find any copies in that price.

Q. They are not copies? A. No, I don't think so.

Q. Did you stop shopping the basements last summer, too, in 1935? A. Well, I cannot remember. No, I don't think I did.

Q. Well, what is the highest priced dress in the basement in Minneapolis? A. Well, they vary. They go from probably a dollar and a half to some place between ten and twelve dollars.

9473

Q. Don't you find copies among the ten and twelve dollar dresses? A. Yes, I do, when they are in stock.

Q. Are they not in stock now? A. Not during the summer season, they don't have them. They are beginning to come in now. During the fall season it comes in.

Q. When are you going to start shopping the basement? A. Well, right away.

Q. Did you shop them last week? A. No, I didn't. I think it is a personal matter, I think that is a question, that I decide by myself.

Q. You have discretion on that, do you? A. I think so.

Q. Do you have discretion in what stores you will shop, too? A. No. I shop all the stores.

9474

Q. But you have discretion as to the price lines you shop? A. Well, you see, on my sketches, they usually give the price of the copy or what it might be, so I go through—

Q. And you did not get any sketches with price lines as low as the basements in the summer?

Mr. Albert: That is not the testimony. Your Honor, the testimony of the witness is that the higher-priced basement dresses go upstairs and that the basement carries the very cheapest merchandise in Minneapolis.

Mr. Haycraft: I did not hear you say that.

The Witness: That is what I meant to say.

By Mr. Haycraft.

Q. You have meant to say it, but counsel testifies a little better.

(Laughter.)

Q. Has there been any use of this form No. 65? A. Oh, yes.

Q. This summer? A. Oh, yes.

Q. How many times would you say that you had to hold a Piracy Committee meeting to determine whether or not a dress was a copy? A. You mean in all? I have no idea, really. 9476

Q. Are they frequent or infrequent? A. Well, more or less infrequent.

Q. Did you have any last week? A. Yes, I did.

Q. What store was the dress in last week? A. You mean what store was the copy in question?

Q. Yes, what store was the copy in? A. May I look at my sketches? They would refresh me.

Q. Certainly, you may refresh your recollection in any way you want to. A. The copy was at Gerner's.

Q. Where was the original? A. The original was at Young Quinlan's.

Q. Who sat on the committee? A. I believe Mr. Bjorkman, of Bjorkman's, Mr. Shapiro of Jackson Graves, Mr. Bach of Raleigh's. 9477

Q. Who selected the personnel of the committee? A. Well, I do that myself.

Q. You do? A. I do not always get the same people. It depends on whether they are in or not. It depends on what vicinity of the city I am in. I go to the closest because I have to carry the dresses around with me.

9478 *Virginia C. McDonald—For Commission—Redirect.*

Q. When you hold this committee meeting where do you hold the committee meeting? A. Well, I just bring the dresses to each man. I see one after the other. I do not call them to a meeting.

Q. I see. You just go to these three men? A. Yes.

Q. And show them the two dresses? A. Yes.

Q. And ask them if it is a copy? A. Yes.

Q. If one is a copy of the other? A. Yes.

Q. And when you find out what their opinion is, do you send that report then directly to the Guild and then wait until you get a report back before you have the store that has a copy returned, or do you go back to that store and tell them right away? A. I go back and tell them to return it if it is judged a copy.

Q. That is what I mean. A. Yes.

Q. That is, if the committee finds it is a copy, then you go back to the store and tell them to return it right away?

A. Yes. I send that report and the other reports right together.

Q. Do you ever find that the original is with more than one store? A. Yes, of course.

Q. Are you careful to select a committee so that no one who has the original will be on the committee? A. Yes, always.

Q. And also, you do not select the store that has got a copy? A. No, no.

Q. You haven't any way of telling how many committee reports you have submitted? A. No, I really have not.

Q. Do you keep copies? A. No, I don't.

Q. Now, with respect to the Respondents' Exhibit 66, which is the report of refusal or failure to co-operate, have you had to use that? A. Yes.

Q. More than once? A. Yes.

Q. Did you ever report to Dayton's? A. I think once.

Q. Do you remember when it was? A. No, I could not tell you.

Q. Well, was it when you first came here or was it just before they were red carded? A. I think it was around that time, yes.

Q. Around that time? A. Well, I mean before—

Q. This time. Just before they were red carded or when you first came on this job? A. Well, we did not have those complaint sheets when I first started working.

Q. When did you get the complaint sheets? A. We got them—I could not be sure, I think last fall. I could not tell you the exact date, right around Christmas, I mean more towards—

Q. You are positive that you have reported Dayton's, though? A. No, I am not positive.

Q. Well, can you recall anybody that you reported? A. I have very seldom used them. I have only just a scattering, not very often have used them.

Q. Would you say as many as ten? A. No, I am sure not as many as ten.

Q. Around five? A. Yes, around five.

Q. Were the stores that you reported red carded as a result of your report? A. No, sir.

Q. Has any other store in Minneapolis been red carded besides Dayton's? A. No, I don't know.

Q. Do you show anyone else this Piracy Committee report before you submit it to the Guild's office in New York? I am referring to Respondents' Exhibit 65, do you show that to anyone else? A. This is shown to the men who sign it.

Q. Each one of them has to sign it? A. Yes, each one of them has to sign it.

Q. Do you fill out the rest of the blank? A. I fill out the rest.

Q. Besides their signatures? A. Yes.

Q. Do you know of any instance where the committee found it was not a copy? A. Yes.

Q. Would you say that was often or not? A. No, I would say it was not often.

9482

9483

9184

Virginia C. McDonald—For Commission—Redirect.

Q. In other words you would not take a garment if you did not think it was a copy? A. No, sir, I would not.

Q. So if they found it was not a copy, they just disagreed with your recommendation? A. I have no recommendation. I just give them the two garments and ask them if one is a copy.

Q. Well, you would not give it to them if you did not think one was a copy? A. No, sir, I would not.

Q. Do you keep a copy of this report of refusal or failure to co-operate? A. I am sorry, I have not done so.

Q. So you do not have any idea of how many there have been? A. No, I really do not.

9485

Q. Now, referring to Respondents' Exhibit 68-A, B and C, these are your daily reports? A. Yes, they are.

Q. Do you find copies every day? A. No, I do not.

Q. When you do not find any, do you just simply report that you did not find any? A. No, I send in, I put up here, general shopping (indicating), on all copies, and I fill in where I have found a copy.

Q. And this general shopping means— A. It means I shop on all sketches I have on hand, that is, I go through all the stocks.

Q. And if you do not find any, you just indicate that? A. I just indicate that way, by sending in.

Q. Do you have some of the sketches there which you will let me see? A. (Producing sketches) Yes. Those are my recent ones.

9486

Q. The recent ones? A. Yes.

Q. They have changed their form from time to time, have they not, in the way they send them out to you? A. Well, let me see. What do you mean, form?

Q. As to the information contained on the form that you get. A. Has been changed?

Q. Yes. A. Yes, slightly.

Q. These are all current, are they? A. Yes, they are.

Q. You haven't any old ones? A. Yes. I have some old ones. I haven't any here.

Q. You haven't any old ones? A. However, there are a few in there that I do not need to have.

Q. Would you indicate those to me? A. Yes.

Q. I do not mean to interfere with your work. A. I think this is one (indicating). I believe that is all.

Q. I think we have one like this. A. This is another (indicating).

Q. Can you spare this one? A. Yes. What is the date?

Q. August 4. A. Yes.

Mr. Haycraft: Mark that as exhibit, unless you want to make that one of your exhibits.

Mr. Albert: Mark it my exhibit, then.

By Mr. Haycraft.

Q. I show you Respondents' Exhibit 70 and ask you if you can tell me what use was made of that, Mrs. McDonald. A. Well, this was mailed to me from New York. It is the sketch of an original design.

Q. That is registered with the Guild? A. With the Fashion Originators Guild.

Q. With the number of the style? A. And the manufacturer.

Q. And a description of the garment. A. And the description of the garment.

Q. Name of the alleged copyist? A. Yes.

Q. Instructions as to what you are to do about it? A. Yes.

Q. The pencil notations, are they yours? A. Well, that should not—

Q. Is that your own writing? A. It is. I put it down to remember something. It does not mean anything.

Q. I do not want that, just leave that off. A. Oh, that could be erased.

Q. Have you got a pencil? A. I don't think so, no, I haven't.

9488

9489

9490 *V. C. McDonald—For Commission—Redirect—Recross.*

Mr. Albert: Here is an eraser here.

(Witness erases marks on document.)

The Witness: Would you want one that is not so messy?

By Mr. Haycraft.

Q. Is that the same as this one? A. No.

Q. This is one you do not have to have? A. Yes.

(Thereupon the documents referred to were marked Respondents' Exhibits 70 and 71 for Identification.)

9491 *By Mr. Haycraft.*

Q. Showing you Respondents' Exhibit 71, will you tell us what that is? A. That is also a sketch of an original that is registered with Fashion Originators Guild.

Q. What is the difference between these two sketches, as to what you are supposed to do with them? A. Well, in this one—

Q. Just a minute, that is 70 she is referring to. A. In this one, if I do find this alleged copy, I hold my Piracy Committee on it.

Q. Yes. Now, as to 71. A. In this one, it has already been decided that Worthmore dress is a copy.

Q. So all you have to do is locate it? A. That is right.

9492 Mr. Haycraft: That is all.

Recross-examination by Mr. Albert.

Q. Now, I show you Respondents' Exhibits 72 and 73 and ask you if it is your recollection as to whether or not you made out a report of refusal or failure to co-operate with respect to Dayton's on form 'Respondents' 66. A. Yes.

Q. And is that your signature? A. It is.

Q. On Respondents' Exhibit 73? A. Yes.

Q. Did you also make out this report, Respondents' Exhibit 72? A. Yes.

Mr. Albert: I offer these in evidence.

(Thereupon the documents heretofore marked Respondents' Exhibits 70, 71, 72 and 73 for Identification, were received in evidence.)

Mr. Haycraft: No objection.

Examiner Bennett: Received.

(Whereupon at 2.45 o'clock P. M. the proceedings were adjourned to 11 o'clock A. M. Eastern Standard Time, Tuesday, the 8th day of September, 1936, at the Commission's hearing room in the city of Chicago, Illinois.)